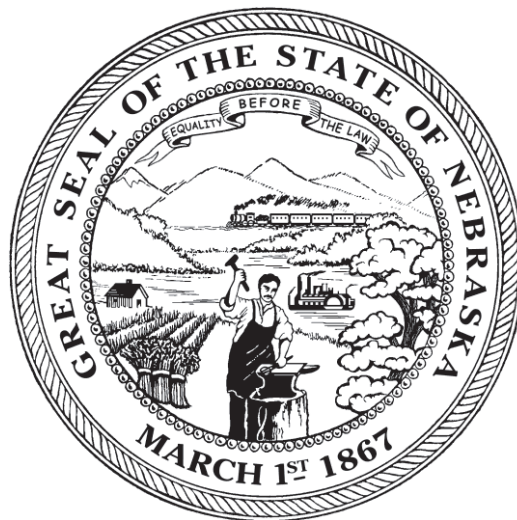


# REVISED STATUTES OF NEBRASKA

REISSUE OF VOLUME 4A

2018

COMPRISING ALL THE STATUTORY LAWS OF A  
GENERAL NATURE IN FORCE AT DATE OF  
PUBLICATION ON THE SUBJECTS ASSIGNED  
TO CHAPTERS 71 TO 75, INCLUSIVE



Published by the Revisor of Statutes

COPYRIGHT, 2018

by

Joanne M. Pepperl  
Revisor of Statutes

For the benefit of the  
State of Nebraska

### **CERTIFICATE OF AUTHENTICATION**

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the Reissue of Volume 4A of the Revised Statutes of Nebraska, 2018, contains all of the laws set forth in Chapters 71 to 75, appearing in Volumes 4 and 4A, Revised Statutes of Nebraska, 2009, as amended and supplemented by the One Hundred First Legislature, Second Session, 2010, through the One Hundred Fifth Legislature, Second Session, 2018, of the Nebraska Legislature, in force at the time of publication hereof.

Joanne M. Pepperl  
Revisor of Statutes

Lincoln, Nebraska  
August 1, 2018

Recommended manner of  
citation from  
this volume

REISSUE REVISED STATUTES  
OF NEBRASKA, 2018

(in full)

R.R.S.2018

(abbreviated)

## EDITORIAL STAFF

Joanne M. Pepperl ..... Revisor of Statutes  
Marcia M. McClurg ..... Assistant Revisor of Statutes  
Neal P. Nelson ..... Associate Revisor of Statutes  
Micah L. Uher ..... Associate Revisor of Statutes  
Mark A. Ludwig ..... Associate Revisor of Statutes  
Tammy Barry ..... Senior Legal Counsel  
Andrew J. Conroy ..... Legal Counsel  
Jane Plettner-Nielson ..... Statute Technician  
Suzanne Tesina ..... Assistant Statute Technician  
Brandi Thorn ..... Assistant Statute Technician  
Marilee McPherson ..... Assistant Statute Technician  
Megan Rothluebber ..... Assistant Statute Technician  
Gaylena Gibson ..... Assistant Statute Technician  
Catlin Bates ..... Assistant Statute Technician



**PUBLIC HEALTH AND WELFARE**

**CHAPTER 71**  
**PUBLIC HEALTH AND WELFARE**

Article.

1. Licenses; Professional and Occupational. Transferred or Repealed.
2. Practice of Barbering. 71-201 to 71-255.
3. Nebraska Cosmetology Act. Transferred or Repealed.
4. Health Care Facilities. 71-401 to 71-475.
5. Diseases.
  - (a) Contagious, Infectious, and Malignant Diseases. 71-501 to 71-515.
  - (b) Alzheimer's Special Care Disclosure Act. 71-516 to 71-518.
  - (c) Inherited or Congenital Infant or Childhood-Onset Diseases. 71-519 to 71-524.
  - (d) Cervical Cancer. 71-525. Repealed.
  - (e) Immunization and Vaccines. 71-526 to 71-530.
  - (f) Human Immunodeficiency Virus Infection. 71-531, 71-532.
  - (g) Infected Health Care Workers. 71-533 to 71-538. Repealed.
  - (h) Exchange of Immunization Information. 71-539 to 71-544.
  - (i) Hepatitis C Education and Prevention Act. 71-545 to 71-550. Repealed.
  - (j) Genetic Tests. 71-551.
  - (k) Syndromic Surveillance Program. 71-552.
  - (l) Newborn Critical Congenital Heart Disease Screening Act. 71-553 to 71-557.
6. Vital Statistics. 71-601 to 71-649.
7. Women's Health. 71-701 to 71-707.
8. Behavioral Health Services. 71-801 to 71-831.
9. Nebraska Mental Health Commitment Act. 71-901 to 71-963.
10. State Anatomical Board, Disposal of Dead Bodies. 71-1001 to 71-1007.
11. Developmental Disabilities Court-Ordered Custody Act. 71-1101 to 71-1134.
12. Sex Offender Commitment and Treatment.
  - (a) Sex Offender Commitment Act. 71-1201 to 71-1226.
  - (b) Treatment and Management Services. 71-1227, 71-1228. Repealed.
13. Funeral Directors, Embalming, and Cremation.
  - (a) Funeral Directors and Embalming. 71-1301 to 71-1354. Transferred or Repealed.
  - (b) Cremation of Human Remains Act. 71-1355 to 71-1385.
14. Medically Handicapped Children. 71-1401 to 71-1406.
15. Housing.
  - (a) Housing Cooperation Law. 71-1501 to 71-1517. Repealed.
  - (b) Nebraska Housing Authorities Law. 71-1518 to 71-1554. Repealed.
  - (c) Modular Housing Units. 71-1555 to 71-1568.01.
  - (d) Plumbing. 71-1569 to 71-1571.
  - (e) Nebraska Housing Agency Act. 71-1572 to 71-15,168.
16. Local Health Services.
  - (a) Health Districts in Counties Having a Population of More than 200,000. 71-1601 to 71-1625.
  - (b) Local Public Health Departments. 71-1626 to 71-1636.
  - (c) Community and Home Health Services. 71-1637 to 71-1639.
17. Nurses.
  - (a) Community Nurses. 71-1701 to 71-1703. Transferred.
  - (b) Nurse Practitioner Act. 71-1704 to 71-1727. Transferred or Repealed.
  - (c) Certified Registered Nurse Anesthetist Act. 71-1728 to 71-1737. Transferred or Repealed.
  - (d) Nurse Midwifery. 71-1738 to 71-1765. Transferred or Repealed.
  - (e) Nursing Incentives. 71-1766 to 71-1771. Repealed.
  - (f) Licensed Practical Nurse-Certified. 71-1772 to 71-1794. Transferred or Repealed.
  - (g) Nurse Licensure Compact. 71-1795 to 71-1795.02.

## PUBLIC HEALTH AND WELFARE

### Article.

- (h) Nebraska Center for Nursing Act. 71-1796 to 71-17,100.
- (i) Nursing Student Loan Act. 71-17,101 to 71-17,107.
- (j) Nursing Faculty Student Loan Act. 71-17,108 to 71-17,116.
- (k) Clinical Nurse Specialist Practice Act. 71-17,117 to 71-17,130. Transferred or Repealed.
- (l) Advanced Practice Registered Nurse Licensure Act. 71-17,131 to 71-17,141. Transferred or Repealed.
- 18. Pathogenic Microorganisms. 71-1801 to 71-1805.
- 19. Care of Children.
  - (a) Foster Care Licensure. 71-1901 to 71-1907.
  - (b) Child Care Licensure. 71-1908 to 71-1923.
  - (c) Children's Residential Facilities and Placing Licensure Act. 71-1924 to 71-1951.
  - (d) Step Up to Quality Child Care Act. 71-1952 to 71-1964.
- 20. Hospitals.
  - (a) Survey and Construction. 71-2001 to 71-2016.
  - (b) Basic Standards. 71-2017 to 71-2030. Repealed.
  - (c) Nursing Homes. 71-2031 to 71-2045.10. Transferred or Repealed.
  - (d) Medical and Hospital Care. 71-2046 to 71-2049.
  - (e) Care Staff Members. 71-2050 to 71-2055. Repealed.
  - (f) Cooperative Ventures by Public Hospitals. 71-2056 to 71-2061.
  - (g) Hospital Consumer Information. 71-2062 to 71-2077.
  - (h) Uniform Billing Forms. 71-2078 to 71-2082.
  - (i) Surgical Infections. 71-2083.
  - (j) Receivers. 71-2084 to 71-2096.
  - (k) Medicaid Program Violations. 71-2097 to 71-20,101.
  - (l) Nonprofit Hospital Sale Act. 71-20,102 to 71-20,114.
  - (m) Assisted-Living Facilities. 71-20,115 to 71-20,117. Transferred or Repealed.
  - (n) Critical Access Hospitals. 71-20,118, 71-20,119. Repealed.
  - (o) Visitation Privileges. 71-20,120.
  - (p) Disposition of Remains of Child Born Dead. 71-20,121.
- 21. Infants. 71-2101 to 71-2104.
- 22. Maternal and Child Health. 71-2201 to 71-2230.
- 23. Nebraska Prostitution Intervention and Treatment Act. 71-2301 to 71-2305.
- 24. Drugs.
  - (a) Adulteration or Misbranding. 71-2401 to 71-2405. Transferred or Repealed.
  - (b) Mail Service Pharmacy Licensure Act. 71-2406 to 71-2409.
  - (c) Emergency Box Drug Act. 71-2410 to 71-2417.
  - (d) Pain Management. 71-2418 to 71-2420.
  - (e) Return of Dispensed Drugs and Devices. 71-2421. Transferred.
  - (f) Cancer Drug Repository Program Act. 71-2422 to 71-2430.
  - (g) Community Health Center Relabeling and Redispensing. 71-2431.
  - (h) Clandestine Drug Labs. 71-2432 to 71-2435.
  - (i) Immunosuppressant Drug Repository Program Act. 71-2436 to 71-2443.
  - (j) Automated Medication Systems Act. 71-2444 to 71-2452.
  - (k) Correctional Facilities and Jails Relabeling and Redispensing. 71-2453.
  - (l) Prescription Drug Monitoring Program. 71-2454 to 71-2456.
  - (m) Prescription Drug Safety Act. 71-2457 to 71-2483.
- 25. Poisons.
  - (a) Poison Control Act. 71-2501 to 71-2512.
  - (b) Lead Poisoning. 71-2513 to 71-2517.
  - (c) Lead Poisoning Prevention Program. 71-2518.
- 26. State Board of Health. 71-2601 to 71-2623.
- 27. Practice of Massage. Transferred or Repealed.
- 28. Physical Therapy. Transferred or Repealed.
- 29. Mosquito Abatement. 71-2901 to 71-2918.
- 30. Nebraska Mental Health First Aid Training. 71-3001 to 71-3007.
- 31. Recreation Camps. 71-3101 to 71-3107.
- 32. Private Detectives. 71-3201 to 71-3213.
- 33. Fluoridation. 71-3301 to 71-3306.
- 34. Reduction in Morbidity and Mortality.



## PUBLIC HEALTH AND WELFARE

### Article.

- (a) General Provisions. 71-3401 to 71-3403.
- (b) Child and Maternal Deaths. 71-3404 to 71-3411.
- 35. Radiation Control and Radioactive Waste.
  - (a) Radiation Control Act. 71-3501 to 71-3520.
  - (b) Central Interstate Low-Level Radioactive Waste Compact. 71-3521, 71-3522.
  - (c) High-Level Radioactive Waste and Transuranic Waste. 71-3523 to 71-3528.
  - (d) Radiological Instruments. 71-3529 to 71-3536.
- 36. Tuberculosis Detection and Prevention Act. 71-3601 to 71-3614.
- 37. Environmental Health Specialists. Transferred or Repealed.
- 38. Practice of Psychology. Transferred or Repealed.
- 39. Indoor Tanning Facility Act. 71-3901 to 71-3909.
- 40. Transactions Relating to Blood and Human Tissues. 71-4001, 71-4002.
- 41. Down Syndrome Diagnosis Information and Support Act. 71-4101 to 71-4104.
- 42. Stroke System of Care Act. 71-4201 to 71-4209.
- 43. Swimming Pools. 71-4301 to 71-4307.
- 44. Rabies. 71-4401 to 71-4412.
- 45. Palliative Care and Quality of Life Act. 71-4501 to 71-4504.
- 46. Manufactured Homes, Recreational Vehicles, and Mobile Home Parks.
  - (a) Manufactured Homes and Recreational Vehicles. 71-4601 to 71-4620.01.
  - (b) Mobile Home Parks. 71-4621 to 71-4635.
- 47. Hearing.
  - (a) Hearing Aids. 71-4701 to 71-4719. Transferred or Repealed.
  - (b) Commission for the Deaf and Hard of Hearing. 71-4720 to 71-4733.
  - (c) Infant Hearing Act. 71-4734 to 71-4744.
- 48. Anatomical Gifts.
  - (a) Uniform Anatomical Gift Act. 71-4801 to 71-4812.
  - (b) Miscellaneous Provisions. 71-4813 to 71-4818.
  - (c) Bone Marrow Donations. 71-4819 to 71-4821.
  - (d) Donor Registry of Nebraska. 71-4822, 71-4823.
  - (e) Revised Uniform Anatomical Gift Act. 71-4824 to 71-4845.
- 49. Chronic Renal Diseases. 71-4901 to 71-4905.
- 50. Compassion and Care for Medically Challenging Pregnancies Act. 71-5001 to 71-5004.
- 51. Emergency Medical Services.
  - (a) Emergency Medical Technicians. 71-5101 to 71-5165. Repealed.
  - (b) Nebraska Trauma Systems Development Act. 71-5166 to 71-5171. Repealed.
  - (c) Emergency Medical Services Act. 71-5172 to 71-51,101. Transferred or Repealed.
  - (d) Automated External Defibrillator. 71-51,102.
  - (e) Nebraska Emergency Medical System Operations Fund. 71-51,103.
- 52. Resident Physician Education and Dental Education Programs.
  - (a) Family Practice Residency. 71-5201 to 71-5207.
  - (b) Dental Program. 71-5208, 71-5209.
  - (c) Primary Care Provider Act. 71-5210 to 71-5213.
- 53. Drinking Water.
  - (a) Nebraska Safe Drinking Water Act. 71-5301 to 71-5313.
  - (b) Drinking Water State Revolving Fund Act. 71-5314 to 71-5327.
- 54. Drug Product Selection. Transferred or Repealed.
- 55. Emergency Medical Care. Transferred or Repealed.
- 56. Rural Health.
  - (a) Commission on Rural Health Manpower. 71-5601 to 71-5612. Repealed.
  - (b) Nebraska Medical Student Assistance Act. 71-5613 to 71-5645. Repealed.
  - (c) Office of Rural Health. 71-5646 to 71-5649.
  - (d) Rural Health Systems and Professional Incentive Act. 71-5650 to 71-5670.01.
  - (e) Rural Health Opportunities Loan Act. 71-5671 to 71-5679. Repealed.
  - (f) Rural Behavioral Health Training and Placement Program Act. 71-5680 to 71-5683.
- 57. Smoking and Tobacco.
  - (a) Clean Indoor Air. 71-5701 to 71-5713. Repealed.
  - (b) Tobacco Prevention and Control Cash Fund. 71-5714.
  - (c) Teen Tobacco Education and Prevention Project. 71-5715. Repealed.

## PUBLIC HEALTH AND WELFARE

### Article.

- (d) Nebraska Clean Indoor Air Act. 71-5716 to 71-5735.
- 58. Health Care; Certificate of Need. 71-5801 to 71-5872.
- 59. Assisted-Living Facility Act. 71-5901 to 71-5909.
- 60. Nursing Homes.
  - (a) Receivers. 71-6001 to 71-6007. Transferred.
  - (b) Nebraska Nursing Home Act. 71-6008 to 71-6037.
  - (c) Training Requirements. 71-6038 to 71-6042.
  - (d) Nursing Home Advisory Council. 71-6043 to 71-6052. Repealed.
  - (e) Nursing Home Administration. 71-6053 to 71-6068. Transferred or Repealed.
- 61. Occupational Therapy. Transferred or Repealed.
- 62. Nebraska Regulation of Health Professions Act. 71-6201 to 71-6230.
- 63. Environmental Hazards.
  - (a) Asbestos Control. 71-6301 to 71-6317.
  - (b) Residential Lead-Based Paint Professions Practice Act. 71-6318 to 71-6333.
- 64. Building Construction. 71-6401 to 71-6407.
- 65. In-home Personal Services. 71-6501 to 71-6504.
- 66. Home Health Aide Services. 71-6601 to 71-6615.
- 67. Medication Regulation.
  - (a) Medication Assistants. 71-6701 to 71-6717. Repealed.
  - (b) Medication Aide Act. 71-6718 to 71-6742.
  - (c) Storage, Handling, and Disposal of Medication. 71-6743.
- 68. Laboratory Accreditation. 71-6801 to 71-6833.
- 69. Abortion. 71-6901 to 71-6911.
- 70. Breast and Cervical Cancer and Mammography. 71-7001 to 71-7013.
- 71. Critical Incident Stress Management. 71-7101 to 71-7113.
- 72. Uniform Determination of Death Act. 71-7201 to 71-7203.
- 73. First Responders Emergency Rescue Act. Repealed.
- 74. Wholesale Drug Distributor Licensing. 71-7401 to 71-7463.
- 75. Community Health Care. Repealed.
- 76. Health Care.
  - (a) Health Care Access and Reform. 71-7601 to 71-7604. Repealed.
  - (b) Nebraska Health Care Funding Act. 71-7605 to 71-7614.
  - (c) Native American Public Health Act. 71-7615 to 71-7622.
- 77. Health Care Facility-Provider Cooperation. 71-7701 to 71-7711.
- 78. Hospice Licensure Act. Repealed.
- 79. Health Care Quality Improvement Act.
  - (a) Peer Review Committees. 71-7901 to 71-7903. Repealed.
  - (b) Health Care Quality Improvement Act. 71-7904 to 71-7913.
- 80. Certified Industrial Hygienist Title Protection Act. 71-8001 to 71-8008.
- 81. Genetic Technologies. Repealed.
- 82. Statewide Trauma System Act. 71-8201 to 71-8253.
- 83. Credentialing of Health Care Facilities. 71-8301 to 71-8314.
- 84. Medical Records. 71-8401 to 71-8407.
- 85. Telehealth Services.
  - (a) Nebraska Telehealth Act. 71-8501 to 71-8508.
  - (b) Children's Behavioral Health. 71-8509 to 71-8512.
- 86. Blind and Visually Impaired. 71-8601 to 71-8616.
- 87. Patient Safety Improvement Act. 71-8701 to 71-8721.
- 88. Stem Cell Research Act. 71-8801 to 71-8806.
- 89. Veterinary Drug Distribution Licensing Act. 71-8901 to 71-8929.
- 90. Sexual Assault or Domestic Violence Patient. 71-9001.
- 91. Concussion Awareness Act. 71-9101 to 71-9106.
- 92. Health Care Transparency Act. Repealed.
- 93. Home Care Consumer Bill of Rights Act. 71-9301 to 71-9306.
- 94. Assisting Caregiver Transitions Act. 71-9401 to 71-9408.
- 95. Direct Primary Care Agreement Act. 71-9501 to 71-9511.
- 96. Investigational Drug Use Act. 71-9601 to 71-9611.

### Cross References

**Anabolic steroids**, prohibited acts, see sections 48-233 and 79-296.

## LICENSES; PROFESSIONAL AND OCCUPATIONAL

**Biological father registry**, see section 43-104.01.  
**Brain injury registry**, see section 81-653 et seq.  
**Cancer registry**, see sections 81-642 to 81-650.  
**Child abuse**, duty to report, see section 28-711.  
**Cigarette tax**, research grants, see section 81-637 et seq.  
**Civil defense and disasters**, Emergency Management Act, see section 81-829.36.  
**Comprehensive Health Insurance Pool Act**, see section 44-4201.  
**Credentialing**, Uniform Credentialing Act, see section 38-101.  
**Death during apprehension or custody**, duty to report, see section 23-1821.  
**Department of Health and Human Services**, see section 81-3113.  
**Disabled Persons and Family Support Act**, see section 68-1501.  
**Disasters and civil defense**, see section 81-829.36 et seq.  
**Disciplinary actions regarding credentials**, Uniform Credentialing Act, see section 38-101.  
**Emergency Management Act**, civil defense and disasters, see section 81-829.36.  
**Environmental Protection Act**, see section 81-1532.  
**Good Samaritan provisions**, see section 25-21,186.  
**Health and Human Services Act**, see section 81-3110.  
**Health and safety regulations for workplaces**, see Chapter 48, article 4.  
**Health Care Purchasing Pool Act**, see section 44-6701.  
**Health Insurance Access Act**, see section 44-5301.  
**Health Maintenance Organization Act**, see section 44-3292.  
**Hospital Authorities Act**, see section 23-3579.  
**License Suspension Act**, see section 43-3301.  
**Licensure of health professions**, Uniform Credentialing Act, see section 38-101.  
**Medicaid, Medical Assistance Act**, see section 68-901.  
**Municipalities, regulatory powers of:**  
    Cities of the first class, see section 16-240.  
    Cities of the metropolitan class, see section 14-102.  
    Cities of the primary class, see section 15-237.  
    Cities of the second class and villages, see sections 17-121, 17-123, and 17-208.  
**Nebraska Health Education Assistance Loan Program**, see section 58-857.  
**Nebraska Local Hospital District Act**, see section 23-3528.  
**Nebraska Pure Food Act**, see section 81-2,239.  
**Parkinson's Disease Registry Act**, see section 81-697.  
**Prepaid Limited Health Service Organization Act**, see section 44-4701.  
**Pure food and drug laws**, powers of Department of Agriculture, see sections 81-201 and 81-2,239 et seq.  
**Rules of administrative agencies**, Administrative Procedure Act, see section 84-920.  
**Schools:**  
    Health education program, see sections 79-712 to 79-714.  
    Immunizations, see section 79-217 et seq.  
    Physical examination of children, see sections 79-248 to 79-253.  
    Powers of school boards and boards of education, see section 79-526.  
**State Veterinarian**, appointment, see section 81-202.01.  
**Uniform Controlled Substances Act**, see section 28-401.01.  
**Uniform Credentialing Act**, see section 38-101.  
**Welfare Reform Act**, see section 68-1708.

## ARTICLE 1

## LICENSES; PROFESSIONAL AND OCCUPATIONAL

### Cross References

**Asbestos Control Act**, see section 71-6317.  
**Barber Act**, see section 71-224.  
**Child Care Licensing Act**, see section 71-1908.  
**Credentialing Act, Uniform**, see section 38-101.  
**Cremation of Human Remains Act**, see section 71-1355.  
**Foster care**, see sections 71-1901 to 71-1906.01.  
**Nebraska Regulation of Health Professions Act**, see section 71-6201.  
**Nurses**, other provisions, see Chapter 71, article 17.  
**Private detectives**, see section 71-3201 et seq.  
**Residential Lead-Based Paint Professions Practice Act**, see section 71-6318.  
**Uniform Credentialing Act**, see section 38-101.

Section  
71-101. Transferred to section 38-101.  
71-101.01. Repealed. Laws 2007, LB 463, § 1319.  
71-101.02. Repealed. Laws 1988, LB 1100, § 185.  
71-102. Transferred to section 38-121.  
71-103. Transferred to section 38-129.  
71-104. Repealed. Laws 2007, LB 463, § 1319.  
71-104.01. Transferred to section 38-131.  
71-105. Transferred to section 38-122.

## PUBLIC HEALTH AND WELFARE

Section	
71-106.	Repealed. Laws 2007, LB 463, § 1319.
71-107.	Transferred to section 38-124.
71-108.	Transferred to section 38-130.
71-109.	Repealed. Laws 2003, LB 242, § 154.
71-110.	Transferred to section 38-142.
71-110.01.	Transferred to section 38-143.
71-111.	Transferred to section 38-158.
71-112.	Transferred to section 38-167.
71-112.01.	Repealed. Laws 2007, LB 463, § 1319.
71-112.02.	Repealed. Laws 1990, LB 818, § 1.
71-112.03.	Transferred to section 38-161.
71-112.04.	Repealed. Laws 1987, LB 473, § 63.
71-112.05.	Repealed. Laws 1987, LB 473, § 63.
71-112.06.	Repealed. Laws 1987, LB 473, § 63.
71-113.	Transferred to section 38-162.
71-114.	Transferred to section 38-164.
71-115.	Repealed. Laws 1987, LB 473, § 63.
71-115.01.	Transferred to section 38-168.
71-115.02.	Repealed. Laws 1987, LB 473, § 63.
71-115.03.	Repealed. Laws 1987, LB 473, § 63.
71-115.04.	Repealed. Laws 1987, LB 473, § 63.
71-116.	Transferred to section 38-163.
71-117.	Transferred to section 38-159.
71-118.	Transferred to section 38-160.
71-119.	Repealed. Laws 2007, LB 463, § 1319.
71-120.	Transferred to section 38-169.
71-121.	Transferred to section 38-170.
71-121.01.	Transferred to section 38-174.
71-122.	Transferred to section 38-171.
71-122.01.	Repealed. Laws 1986, LB 926, § 65.
71-123.	Repealed. Laws 2007, LB 463, § 1319.
71-124.	Transferred to section 38-172.
71-124.01.	Transferred to section 38-141.
71-125.	Transferred to section 38-132.
71-126.	Repealed. Laws 1991, LB 703, § 83.
71-127.	Repealed. Laws 1986, LB 926, § 65.
71-128.	Transferred to section 38-133.
71-129.	Transferred to section 38-135.
71-130.	Repealed. Laws 1990, LB 1064, § 33.
71-131.	Transferred to section 38-136.
71-132.	Repealed. Laws 2007, LB 463, § 1319.
71-133.	Transferred to section 38-134.
71-134.	Repealed. Laws 1988, LB 1100, § 185.
71-134.01.	Repealed. Laws 1988, LB 1100, § 185.
71-134.02.	Repealed. Laws 1988, LB 1100, § 185.
71-134.03.	Repealed. Laws 1988, LB 1100, § 185.
71-135.	Repealed. Laws 1990, LB 1064, § 33.
71-136.	Repealed. Laws 1990, LB 1064, § 33.
71-137.	Repealed. Laws 1990, LB 1064, § 33.
71-138.	Transferred to section 38-137.
71-139.	Repealed. Laws 2007, LB 463, § 1319.
71-139.01.	Repealed. Laws 2007, LB 463, § 1319.
71-139.02.	Repealed. Laws 2007, LB 463, § 1319.
71-140.	Repealed. Laws 2007, LB 463, § 1319.
71-141.	Repealed. Laws 2007, LB 463, § 1319.
71-142.	Repealed. Laws 2007, LB 463, § 1319.
71-143.	Repealed. Laws 2007, LB 463, § 1319.
71-144.	Repealed. Laws 2007, LB 463, § 1319.
71-145.	Transferred to section 38-125.
71-146.	Repealed. Laws 1980, LB 94, § 19.
71-147.	Transferred to section 38-178.

**LICENSES; PROFESSIONAL AND OCCUPATIONAL**

Section	
71-147.01.	Transferred to section 38-1,128.
71-147.02.	Transferred to section 38-183.
71-148.	Transferred to section 38-179.
71-149.	Transferred to section 38-144.
71-150.	Transferred to section 38-185.
71-151.	Repealed. Laws 2007, LB 463, § 1319.
71-152.	Transferred to section 38-187.
71-153.	Transferred to section 38-188.
71-154.	Transferred to section 38-189.
71-155.	Transferred to section 38-196.
71-155.01.	Transferred to section 38-1,101.
71-155.02.	Repealed. Laws 1988, LB 1100, § 185.
71-155.03.	Transferred to section 38-198.
71-156.	Transferred to section 38-191.
71-157.	Transferred to section 38-194.
71-158.	Transferred to section 38-195.
71-159.	Transferred to section 38-1,102.
71-160.	Repealed. Laws 2007, LB 463, § 1319.
71-161.	Repealed. Laws 1988, LB 352, § 190.
71-161.01.	Transferred to section 38-177.
71-161.02.	Transferred to section 38-197.
71-161.03.	Transferred to section 38-190.
71-161.04.	Transferred to section 38-148.
71-161.05.	Repealed. Laws 2007, LB 463, § 1319.
71-161.06.	Transferred to section 38-149.
71-161.07.	Repealed. Laws 2007, LB 463, § 1319.
71-161.08.	Repealed. Laws 1988, LB 1100, § 185.
71-161.09.	Transferred to section 38-145.
71-161.10.	Transferred to section 38-146.
71-161.11.	Transferred to section 38-1,109.
71-161.12.	Repealed. Laws 2007, LB 463, § 1319.
71-161.13.	Transferred to section 38-1,110.
71-161.14.	Transferred to section 38-1,111.
71-161.15.	Transferred to section 38-1,112.
71-161.16.	Transferred to section 38-1,113.
71-161.17.	Repealed. Laws 2007, LB 463, § 1319.
71-161.18.	Repealed. Laws 2007, LB 463, § 1319.
71-161.19.	Transferred to section 38-173.
71-161.20.	Repealed. Laws 2007, LB 463, § 1319.
71-162.	Transferred to section 38-151.
71-162.01.	Transferred to section 38-152.
71-162.02.	Transferred to section 38-153.
71-162.03.	Transferred to section 38-154.
71-162.04.	Transferred to section 38-155.
71-162.05.	Transferred to section 38-156.
71-163.	Transferred to section 38-157.
71-164.	Transferred to section 38-1,114.
71-164.01.	Transferred to section 38-1,116.
71-165.	Repealed. Laws 2007, LB 463, § 1319.
71-166.	Transferred to section 38-1,117.
71-167.	Transferred to section 38-1,118.
71-168.	Transferred to section 38-1,124.
71-168.01.	Transferred to section 38-1,138.
71-168.02.	Transferred to section 38-1,127.
71-169.	Transferred to section 38-126.
71-170.	Transferred to section 38-127.
71-171.	Transferred to section 38-1,139.
71-171.01.	Transferred to section 38-1,107.
71-171.02.	Transferred to section 38-1,108.
71-172.	Repealed. Laws 2007, LB 463, § 1319.
71-172.01.	Transferred to section 38-175.

## PUBLIC HEALTH AND WELFARE

Section	
71-172.02.	Repealed. Laws 2007, LB 463, § 1319.
71-173.	Transferred to section 38-3006.
71-174.	Transferred to section 38-3007.
71-174.01.	Repealed. Laws 2007, LB 463, § 1319.
71-174.02.	Transferred to section 38-3011.
71-175.	Transferred to section 38-3008.
71-175.01.	Repealed. Laws 2007, LB 463, § 1319.
71-176.	Transferred to section 38-3010.
71-176.01.	Transferred to section 38-3012.
71-176.02.	Repealed. Laws 1972, LB 1044, § 1.
71-176.03.	Repealed. Laws 2007, LB 463, § 1319.
71-177.	Transferred to section 38-805.
71-178.	Transferred to section 38-806.
71-179.	Transferred to section 38-807.
71-179.01.	Repealed. Laws 2007, LB 463, § 1319.
71-180.	Transferred to section 38-803.
71-180.01.	Repealed. Laws 1988, LB 1100, § 185.
71-180.02.	Repealed. Laws 1988, LB 1100, § 185.
71-180.03.	Repealed. Laws 1988, LB 1100, § 185.
71-180.04.	Repealed. Laws 1988, LB 1100, § 185.
71-180.05.	Repealed. Laws 1988, LB 1100, § 185.
71-181.	Transferred to section 38-809.
71-182.	Transferred to section 38-811.
71-183.	Transferred to section 38-1115.
71-183.01.	Transferred to section 38-1116.
71-183.02.	Transferred to section 38-1107.
71-184.	Repealed. Laws 2007, LB 463, § 1319.
71-185.	Transferred to section 38-1117.
71-185.01.	Transferred to section 38-1125.
71-185.02.	Transferred to section 38-1123.
71-185.03.	Transferred to section 38-1124.
71-186.	Repealed. Laws 2007, LB 463, § 1319.
71-187.	Repealed. Laws 1986, LB 926, § 65.
71-188.	Repealed. Laws 2007, LB 463, § 1319.
71-189.	Transferred to section 38-1127.
71-190.	Transferred to section 38-1128.
71-191.	Transferred to section 38-1129.
71-192.	Repealed. Laws 1988, LB 1100, § 185.
71-193.	Repealed. Laws 1971, LB 587, § 15.
71-193.01.	Transferred to section 38-1149.
71-193.02.	Transferred to section 38-1150.
71-193.03.	Transferred to section 38-1151.
71-193.04.	Transferred to section 38-1118.
71-193.05.	Repealed. Laws 2007, LB 463, § 1319.
71-193.06.	Repealed. Laws 1971, LB 587, § 15.
71-193.07.	Repealed. Laws 1971, LB 587, § 15.
71-193.08.	Repealed. Laws 1971, LB 587, § 15.
71-193.09.	Repealed. Laws 1986, LB 572, § 8.
71-193.10.	Repealed. Laws 1971, LB 587, § 15.
71-193.11.	Repealed. Laws 1953, c. 238, § 7.
71-193.12.	Repealed. Laws 1971, LB 587, § 15.
71-193.13.	Transferred to section 38-1135.
71-193.14.	Transferred to section 38-1136.
71-193.15.	Transferred to section 38-1130.
71-193.16.	Repealed. Laws 2007, LB 463, § 1319.
71-193.17.	Transferred to section 38-1131.
71-193.18.	Transferred to section 38-1132.
71-193.19.	Transferred to section 38-1133.
71-193.20.	Transferred to section 38-1134.
71-193.21.	Repealed. Laws 2007, LB 463, § 1319.
71-193.22.	Repealed. Laws 2007, LB 463, § 1319.

**LICENSES; PROFESSIONAL AND OCCUPATIONAL**

Section	
71-193.23.	Transferred to section 38-1137.
71-193.24.	Repealed. Laws 2007, LB 463, § 1319.
71-193.25.	Transferred to section 38-1138.
71-193.26.	Transferred to section 38-1139.
71-193.27.	Transferred to section 38-1140.
71-193.28.	Transferred to section 38-1142.
71-193.29.	Transferred to section 38-1141.
71-193.30.	Transferred to section 38-1144.
71-193.31.	Transferred to section 38-1145.
71-193.32.	Transferred to section 38-1146.
71-193.33.	Transferred to section 38-1143.
71-193.34.	Transferred to section 38-1147.
71-193.35.	Transferred to section 38-1148.
71-194.	Transferred to section 71-1301.
71-195.	Transferred to section 71-1302.
71-196.	Transferred to section 71-1303.
71-197.	Repealed. Laws 1980, LB 94, § 19.
71-198.	Transferred to section 71-1304.
71-199.	Transferred to section 71-1305.
71-1,100.	Transferred to section 71-1306.
71-1,101.	Repealed. Laws 1993, LB 187, § 39.
71-1,102.	Transferred to section 38-2024.
71-1,103.	Transferred to section 38-2025.
71-1,104.	Transferred to section 38-2026.
71-1,104.01.	Transferred to section 71-551.
71-1,104.02.	Repealed. Laws 1991, LB 456, § 40.
71-1,104.03.	Repealed. Laws 1991, LB 456, § 40.
71-1,104.04.	Repealed. Laws 1991, LB 456, § 40.
71-1,104.05.	Repealed. Laws 1991, LB 456, § 40.
71-1,104.06.	Repealed. Laws 2007, LB 463, § 1319.
71-1,105.	Transferred to section 38-2004.
71-1,106.	Repealed. Laws 2007, LB 463, § 1319.
71-1,106.01.	Repealed. Laws 2009, LB 195, § 111.
71-1,107.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.01.	Transferred to section 38-2002.
71-1,107.02.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.03.	Transferred to section 38-2038.
71-1,107.04.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.05.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.06.	Transferred to section 38-2042.
71-1,107.07.	Transferred to section 38-2039.
71-1,107.08.	Transferred to section 38-2040.
71-1,107.09.	Transferred to section 38-2041.
71-1,107.10.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.11.	Transferred to section 38-2043.
71-1,107.12.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.13.	Transferred to section 38-2044.
71-1,107.14.	Transferred to section 38-2045.
71-1,107.15.	Transferred to section 38-2046.
71-1,107.16.	Transferred to section 38-2014.
71-1,107.17.	Transferred to section 38-2047.
71-1,107.18.	Transferred to section 38-2048.
71-1,107.19.	Transferred to section 38-2049.
71-1,107.20.	Transferred to section 38-2050.
71-1,107.21.	Transferred to section 38-2052.
71-1,107.22.	Repealed. Laws 1981, LB 545, § 52.
71-1,107.23.	Transferred to section 38-2051.
71-1,107.24.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.25.	Transferred to section 38-2056.
71-1,107.26.	Repealed. Laws 2007, LB 463, § 1319.
71-1,107.27.	Repealed. Laws 2007, LB 463, § 1319.

## PUBLIC HEALTH AND WELFARE

Section	
71-1,107.28.	Transferred to section 38-2053.
71-1,107.29.	Transferred to section 38-2054.
71-1,107.30.	Transferred to section 38-2055.
71-1,108.	Repealed. Laws 1953, c. 245, § 21.
71-1,109.	Repealed. Laws 1953, c. 245, § 21.
71-1,110.	Repealed. Laws 1953, c. 245, § 21.
71-1,111.	Repealed. Laws 1953, c. 245, § 21.
71-1,112.	Repealed. Laws 1953, c. 245, § 21.
71-1,113.	Repealed. Laws 1953, c. 245, § 21.
71-1,114.	Repealed. Laws 1953, c. 245, § 21.
71-1,115.	Repealed. Laws 1953, c. 245, § 21.
71-1,115.01.	Repealed. Laws 1953, c. 245, § 21.
71-1,115.02.	Repealed. Laws 1953, c. 245, § 21.
71-1,115.03.	Repealed. Laws 1953, c. 245, § 21.
71-1,116.	Repealed. Laws 1953, c. 245, § 21.
71-1,117.	Repealed. Laws 1953, c. 245, § 21.
71-1,118.	Repealed. Laws 1953, c. 245, § 21.
71-1,119.	Repealed. Laws 1953, c. 245, § 21.
71-1,120.	Repealed. Laws 1953, c. 245, § 21.
71-1,121.	Repealed. Laws 1953, c. 245, § 21.
71-1,122.	Repealed. Laws 1953, c. 245, § 21.
71-1,123.	Repealed. Laws 1953, c. 245, § 21.
71-1,124.	Repealed. Laws 1953, c. 245, § 21.
71-1,125.	Repealed. Laws 1953, c. 245, § 21.
71-1,126.	Repealed. Laws 1953, c. 245, § 21.
71-1,127.	Repealed. Laws 1953, c. 245, § 21.
71-1,128.	Repealed. Laws 1953, c. 245, § 21.
71-1,129.	Repealed. Laws 1953, c. 245, § 21.
71-1,130.	Repealed. Laws 1953, c. 245, § 21.
71-1,131.	Repealed. Laws 1953, c. 245, § 21.
71-1,132.	Repealed. Laws 1953, c. 245, § 21.
71-1,132.01.	Transferred to section 38-2201.
71-1,132.02.	Act, expired.
71-1,132.03.	Act, expired.
71-1,132.04.	Transferred to section 38-2217.
71-1,132.05.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.06.	Transferred to section 38-2218.
71-1,132.07.	Transferred to section 38-2213.
71-1,132.08.	Transferred to section 38-2214.
71-1,132.09.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.10.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.11.	Transferred to section 38-2216.
71-1,132.12.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.13.	Transferred to section 38-2220.
71-1,132.14.	Transferred to section 38-2222.
71-1,132.15.	Transferred to section 38-2223.
71-1,132.16.	Transferred to section 38-2225.
71-1,132.17.	Transferred to section 38-2228.
71-1,132.18.	Transferred to section 38-2229.
71-1,132.19.	Transferred to section 38-2224.
71-1,132.20.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.21.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.22.	Repealed. Laws 2003, LB 242, § 154.
71-1,132.23.	Repealed. Laws 1976, LB 692, § 6.
71-1,132.24.	Transferred to section 38-2232.
71-1,132.25.	Transferred to section 38-2233.
71-1,132.26.	Transferred to section 38-2234.
71-1,132.27.	Transferred to section 38-2235.
71-1,132.28.	Transferred to section 38-2236.
71-1,132.29.	Repealed. Laws 2007, LB 463, § 1319.
71-1,132.30.	Transferred to section 38-2219.



## LICENSES; PROFESSIONAL AND OCCUPATIONAL

- Section
- 71-1,132.31. Transferred to section 38-2215.
  - 71-1,132.32. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.33. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.34. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.35. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,132.36. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,132.37. Transferred to section 38-2221.
  - 71-1,132.38. Transferred to section 38-2231.
  - 71-1,132.39. Repealed. Laws 1975, LB 422, § 21.
  - 71-1,132.40. Repealed. Laws 1975, LB 422, § 21.
  - 71-1,132.41. Transferred to section 38-2230.
  - 71-1,132.42. Repealed. Laws 1975, LB 422, § 21.
  - 71-1,132.43. Repealed. Laws 1978, LB 756, § 59.
  - 71-1,132.44. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.45. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.46. Repealed. Laws 1983, LB 472, § 8.
  - 71-1,132.47. Repealed. Laws 2003, LB 242, § 154.
  - 71-1,132.48. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,132.49. Repealed. Laws 2003, LB 242, § 154.
  - 71-1,132.50. Repealed. Laws 2003, LB 242, § 154.
  - 71-1,132.51. Repealed. Laws 1981, LB 379, § 38.
  - 71-1,132.52. Repealed. Laws 1995, LB 563, § 50.
  - 71-1,132.53. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,133. Transferred to section 38-2605.
  - 71-1,134. Transferred to section 38-2607.
  - 71-1,135. Transferred to section 38-2608.
  - 71-1,135.01. Transferred to section 38-2604.
  - 71-1,135.02. Transferred to section 38-2613.
  - 71-1,135.03. Repealed. Laws 2007, LB 236, § 47.
  - 71-1,135.04. Transferred to section 38-2610.
  - 71-1,135.05. Repealed. Laws 2007, LB 236, § 47.
  - 71-1,135.06. Transferred to section 38-2617.
  - 71-1,135.07. Transferred to section 38-2618.
  - 71-1,136. Transferred to section 38-2616.
  - 71-1,136.01. Transferred to section 38-2611.
  - 71-1,136.02. Repealed. Laws 2003, LB 242, § 154.
  - 71-1,136.03. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,136.04. Transferred to section 38-2619.
  - 71-1,136.05. Transferred to section 38-2620.
  - 71-1,136.06. Transferred to section 38-2621.
  - 71-1,136.07. Transferred to section 38-2622.
  - 71-1,136.08. Transferred to section 38-2623.
  - 71-1,136.09. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,137. Transferred to section 38-2029.
  - 71-1,138. Transferred to section 38-2030.
  - 71-1,139. Transferred to section 38-2031.
  - 71-1,139.01. Transferred to section 38-2032.
  - 71-1,140. Transferred to section 38-2005.
  - 71-1,140.01. Repealed. Laws 1969, c. 565, § 6.
  - 71-1,140.02. Repealed. Laws 1969, c. 565, § 6.
  - 71-1,140.03. Repealed. Laws 1969, c. 565, § 6.
  - 71-1,141. Transferred to section 38-2033.
  - 71-1,142. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,143. Transferred to section 38-2850.
  - 71-1,143.01. Transferred to section 38-2851.
  - 71-1,143.02. Transferred to section 38-2853.
  - 71-1,143.03. Transferred to section 38-2866.
  - 71-1,144. Transferred to section 38-2854.
  - 71-1,144.01. Repealed. Laws 2007, LB 463, § 1319.
  - 71-1,144.02. Repealed. Laws 2000, LB 1135, § 34.
  - 71-1,144.03. Repealed. Laws 2002, LB 1021, § 111.

## PUBLIC HEALTH AND WELFARE

### Section

- 71-1,144.04. Repealed. Laws 2002, LB 1021, § 111.
- 71-1,144.05. Repealed. Laws 2002, LB 1021, § 111.
- 71-1,145. Transferred to section 71-1,143.01.
- 71-1,145.01. Transferred to section 71-1,143.02.
- 71-1,146. Transferred to section 38-2804.
- 71-1,146.01. Transferred to section 38-2870.
- 71-1,146.02. Transferred to section 38-2871.
- 71-1,147. Transferred to section 38-2867.
- 71-1,147.01. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.02. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.03. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.04. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.05. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.06. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.07. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.08. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.09. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.10. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.11. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.12. Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.13. Transferred to section 38-28,103.
- 71-1,147.14. Repealed. Laws 2001, LB 398, § 96.
- 71-1,147.15. Repealed. Laws 2008, LB 308, § 18.
- 71-1,147.16. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.17. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.18. Transferred to section 38-2846.
- 71-1,147.19. Transferred to section 38-2824.
- 71-1,147.20. Transferred to section 38-2803.
- 71-1,147.21. Transferred to section 38-2805.
- 71-1,147.22. Transferred to section 38-2855.
- 71-1,147.23. Transferred to section 38-2856.
- 71-1,147.24. Transferred to section 38-2857.
- 71-1,147.25. Transferred to section 38-2858.
- 71-1,147.26. Transferred to section 38-2859.
- 71-1,147.27. Transferred to section 38-2860.
- 71-1,147.28. Transferred to section 38-2861.
- 71-1,147.29. Transferred to section 38-2862.
- 71-1,147.30. Transferred to section 38-2863.
- 71-1,147.31. Transferred to section 38-2864.
- 71-1,147.32. Transferred to section 38-2865.
- 71-1,147.33. Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.34. Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.35. Transferred to section 38-2869.
- 71-1,147.36. Transferred to section 38-2868.
- 71-1,147.37. Repealed. Laws 1999, LB 594, § 75.
- 71-1,147.38. Repealed. Laws 1999, LB 594, § 75.
- 71-1,147.39. Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.40. Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.41. Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.42. Transferred to section 38-2875.
- 71-1,147.43. Transferred to section 38-2876.
- 71-1,147.44. Transferred to section 38-2877.
- 71-1,147.45. Transferred to section 38-2878.
- 71-1,147.46. Transferred to section 38-2879.
- 71-1,147.47. Transferred to section 38-2880.
- 71-1,147.48. Transferred to section 38-2881.
- 71-1,147.49. Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.50. Transferred to section 38-2882.
- 71-1,147.51. Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.52. Transferred to section 38-2883.
- 71-1,147.53. Transferred to section 38-2884.

## LICENSES; PROFESSIONAL AND OCCUPATIONAL

Section	
71-1,147.54.	Transferred to section 38-2885.
71-1,147.55.	Transferred to section 38-2886.
71-1,147.56.	Transferred to section 38-2887.
71-1,147.57.	Transferred to section 38-2888.
71-1,147.58.	Repealed. Laws 2001, LB 398, § 97.
71-1,147.59.	Transferred to section 38-2889.
71-1,147.60.	Repealed. Laws 2001, LB 398, § 97.
71-1,147.61.	Repealed. Laws 2001, LB 398, § 97.
71-1,147.62.	Transferred to section 38-2872.
71-1,147.63.	Transferred to section 38-2873.
71-1,147.64.	Transferred to section 38-2874.
71-1,147.65.	Transferred to section 38-2890.
71-1,147.66.	Transferred to section 38-2891.
71-1,147.67.	Transferred to section 38-2892.
71-1,147.68.	Transferred to section 38-2893.
71-1,147.69.	Transferred to section 38-2894.
71-1,147.70.	Transferred to section 38-2895.
71-1,147.71.	Transferred to section 38-2896.
71-1,147.72.	Transferred to section 38-2897.
71-1,148.	Transferred to section 38-2899.
71-1,149.	Transferred to section 38-28,100.
71-1,150.	Repealed. Laws 2003, LB 242, § 154.
71-1,151.	Repealed. Laws 2007, LB 463, § 1319.
71-1,152.	Repealed. Laws 1967, c. 439, § 18.
71-1,152.01.	Transferred to section 38-3320.
71-1,153.	Transferred to section 38-3301.
71-1,154.	Repealed. Laws 2007, LB 463, § 1319.
71-1,155.	Transferred to section 38-3321.
71-1,156.	Repealed. Laws 1987, LB 473, § 63.
71-1,157.	Transferred to section 38-3323.
71-1,158.	Transferred to section 38-3322.
71-1,159.	Repealed. Laws 1987, LB 473, § 63.
71-1,160.	Repealed. Laws 2007, LB 463, § 1319.
71-1,161.	Repealed. Laws 2005, LB 301, § 78.
71-1,162.	Repealed. Laws 2007, LB 463, § 1319.
71-1,163.	Transferred to section 38-3324.
71-1,164.	Transferred to section 38-3330.
71-1,165.	Transferred to section 38-3325.
71-1,166.	Transferred to section 38-3326.
71-1,167.	Repealed. Laws 1988, LB 1100, § 185.
71-1,168.	Repealed. Laws 2000, LB 833, § 12.
71-1,169.	Repealed. Laws 2000, LB 833, § 12.
71-1,170.	Repealed. Laws 2000, LB 833, § 12.
71-1,171.	Repealed. Laws 2000, LB 833, § 12.
71-1,172.	Repealed. Laws 2000, LB 833, § 12.
71-1,173.	Repealed. Laws 2000, LB 833, § 12.
71-1,174.	Repealed. Laws 2000, LB 833, § 12.
71-1,175.	Repealed. Laws 2000, LB 833, § 12.
71-1,176.	Repealed. Laws 2000, LB 833, § 12.
71-1,177.	Repealed. Laws 1988, LB 1100, § 185.
71-1,178.	Repealed. Laws 2000, LB 833, § 12.
71-1,179.	Repealed. Laws 1988, LB 1100, § 185.
71-1,180.	Repealed. Laws 2000, LB 833, § 12.
71-1,181.	Repealed. Laws 2000, LB 833, § 12.
71-1,182.	Repealed. Laws 1988, LB 1100, § 185.
71-1,183.	Repealed. Laws 2000, LB 833, § 12.
71-1,184.	Repealed. Laws 2000, LB 833, § 12.
71-1,185.	Repealed. Laws 2000, LB 833, § 12.
71-1,186.	Transferred to section 38-502.
71-1,186.01.	Repealed. Laws 2007, LB 247, § 92.
71-1,187.	Transferred to section 38-511.

## PUBLIC HEALTH AND WELFARE

Section	
71-1,188.	Transferred to section 38-513.
71-1,189.	Transferred to section 38-514.
71-1,190.	Transferred to section 38-515.
71-1,190.01.	Repealed. Laws 2007, LB 247, § 92.
71-1,191.	Repealed. Laws 2007, LB 463, § 1319.
71-1,192.	Repealed. Laws 2007, LB 247, § 92.
71-1,193.	Repealed. Laws 2007, LB 463, § 1319.
71-1,194.	Transferred to section 38-518.
71-1,195.	Repealed. Laws 1985, LB 129, § 36.
71-1,195.01.	Transferred to section 38-519.
71-1,195.02.	Transferred to section 38-520.
71-1,195.03.	Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,195.04.	Transferred to section 38-521.
71-1,195.05.	Transferred to section 38-522.
71-1,195.06.	Transferred to section 38-523.
71-1,195.07.	Transferred to section 38-524.
71-1,195.08.	Transferred to section 38-525.
71-1,195.09.	Transferred to section 38-526.
71-1,196.	Transferred to section 38-512.
71-1,197.	Repealed. Laws 1985, LB 129, § 36.
71-1,197.01.	Repealed. Laws 1988, LB 1100, § 185.
71-1,198.	Repealed. Laws 2007, LB 463, § 1319.
71-1,199.	Transferred to section 38-1,129.
71-1,200.	Transferred to section 38-1,130.
71-1,201.	Transferred to section 38-1,133.
71-1,202.	Transferred to section 38-1,134.
71-1,203.	Repealed. Laws 2007, LB 463, § 1319.
71-1,204.	Transferred to section 38-1,135.
71-1,205.	Transferred to section 38-1,136.
71-1,206.	Repealed. Laws 1994, LB 1210, § 192.
71-1,206.01.	Transferred to section 38-3102.
71-1,206.02.	Transferred to section 38-3103.
71-1,206.03.	Transferred to section 38-3104.
71-1,206.04.	Transferred to section 38-3105.
71-1,206.05.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.06.	Transferred to section 38-3106.
71-1,206.07.	Transferred to section 38-3107.
71-1,206.08.	Transferred to section 38-3108.
71-1,206.09.	Transferred to section 38-3109.
71-1,206.10.	Transferred to section 38-3110.
71-1,206.11.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.12.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.13.	Repealed. Laws 2003, LB 242, § 154.
71-1,206.14.	Transferred to section 38-3111.
71-1,206.15.	Transferred to section 38-3114.
71-1,206.16.	Transferred to section 38-3115.
71-1,206.17.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.18.	Transferred to section 38-3116.
71-1,206.19.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.20.	Transferred to section 38-3117.
71-1,206.21.	Transferred to section 38-3118.
71-1,206.22.	Transferred to section 38-3119.
71-1,206.23.	Transferred to section 38-3120.
71-1,206.24.	Transferred to section 38-3128.
71-1,206.25.	Transferred to section 38-3113.
71-1,206.26.	Transferred to section 38-3129.
71-1,206.27.	Transferred to section 38-3130.
71-1,206.28.	Repealed. Laws 2007, LB 463, § 1319.
71-1,206.29.	Transferred to section 38-3131.
71-1,206.30.	Transferred to section 38-3132.
71-1,206.31.	Repealed. Laws 2007, LB 463, § 1319.

## LICENSES; PROFESSIONAL AND OCCUPATIONAL

Section	
71-1,206.32.	Transferred to section 38-3122.
71-1,206.33.	Transferred to section 38-3123.
71-1,206.34.	Transferred to section 38-3124.
71-1,206.35.	Transferred to section 38-3125.
71-1,207.	Repealed. Laws 1994, LB 1210, § 192.
71-1,208.	Transferred to section 71-1,206.11.
71-1,209.	Transferred to section 71-1,206.12.
71-1,210.	Transferred to section 71-1,206.13.
71-1,211.	Repealed. Laws 1994, LB 1210, § 192.
71-1,212.	Repealed. Laws 1994, LB 1210, § 192.
71-1,213.	Repealed. Laws 1994, LB 1210, § 192.
71-1,214.	Repealed. Laws 1994, LB 1210, § 192.
71-1,215.	Repealed. Laws 1988, LB 1100, § 185.
71-1,216.	Repealed. Laws 1988, LB 1100, § 185.
71-1,217.	Repealed. Laws 1988, LB 1100, § 185.
71-1,218.	Repealed. Laws 1994, LB 1210, § 192.
71-1,219.	Repealed. Laws 1994, LB 1210, § 192.
71-1,220.	Transferred to section 71-1,206.28.
71-1,221.	Repealed. Laws 1994, LB 1210, § 192.
71-1,222.	Repealed. Laws 1994, LB 1210, § 192.
71-1,223.	Repealed. Laws 1994, LB 1210, § 192.
71-1,224.	Repealed. Laws 1994, LB 1210, § 192.
71-1,225.	Repealed. Laws 1994, LB 1210, § 192.
71-1,226.	Repealed. Laws 1994, LB 1210, § 192.
71-1,227.	Transferred to section 38-3206.
71-1,228.	Repealed. Laws 2007, LB 463, § 1319.
71-1,229.	Transferred to section 38-3214.
71-1,230.	Transferred to section 38-3215.
71-1,231.	Transferred to section 38-3209.
71-1,232.	Repealed. Laws 2003, LB 245, § 19.
71-1,233.	Transferred to section 38-3210.
71-1,234.	Repealed. Laws 2007, LB 463, § 1319.
71-1,235.	Transferred to section 38-3208.
71-1,236.	Transferred to section 38-3216.
71-1,237.	Repealed. Laws 2003, LB 242, § 154.
71-1,238.	Transferred to section 38-402.
71-1,239.	Repealed. Laws 1999, LB 178, § 6.
71-1,239.01.	Transferred to section 38-410.
71-1,240.	Transferred to section 38-409.
71-1,241.	Transferred to section 38-411.
71-1,242.	Repealed. Laws 2007, LB 463, § 1319.
71-1,243.	Repealed. Laws 2003, LB 242, § 154.
71-1,244.	Repealed. Laws 1993, LB 669, § 62.
71-1,245.	Repealed. Laws 1993, LB 669, § 62.
71-1,246.	Repealed. Laws 1993, LB 669, § 62.
71-1,247.	Repealed. Laws 1993, LB 669, § 62.
71-1,248.	Transferred to section 71-1,311.
71-1,249.	Transferred to section 71-1,300.
71-1,250.	Transferred to section 71-1,303.
71-1,251.	Transferred to section 71-1,301.
71-1,252.	Transferred to section 71-1,304.
71-1,253.	Repealed. Laws 1993, LB 669, § 62.
71-1,254.	Repealed. Laws 1993, LB 669, § 62.
71-1,255.	Transferred to section 71-1,297.
71-1,256.	Transferred to section 71-1,318.
71-1,257.	Repealed. Laws 1993, LB 669, § 62.
71-1,258.	Transferred to section 71-1,319.
71-1,259.	Repealed. Laws 1993, LB 669, § 62.
71-1,260.	Transferred to section 71-1,320.
71-1,261.	Transferred to section 71-1,321.
71-1,262.	Repealed. Laws 1993, LB 669, § 62.

**PUBLIC HEALTH AND WELFARE**

Section	
71-1,263.	Transferred to section 71-1,322.
71-1,264.	Transferred to section 71-1,323.
71-1,265.	Repealed. Laws 1993, LB 669, § 62.
71-1,266.	Transferred to section 71-1,310.
71-1,267.	Transferred to section 71-1,324.
71-1,268.	Repealed. Laws 1993, LB 669, § 62.
71-1,269.	Transferred to section 71-1,325.
71-1,270.	Transferred to section 71-1,333.
71-1,271.	Repealed. Laws 1993, LB 669, § 62.
71-1,272.	Repealed. Laws 1988, LB 1100, § 185.
71-1,273.	Transferred to section 71-1,326.
71-1,274.	Repealed. Laws 1993, LB 669, § 62.
71-1,275.	Transferred to section 71-1,327.
71-1,276.	Repealed. Laws 1988, LB 1100, § 185.
71-1,277.	Transferred to section 71-1,328.
71-1,278.	Transferred to section 38-1702.
71-1,279.	Transferred to section 38-1708.
71-1,280.	Transferred to section 38-1709.
71-1,281.	Transferred to section 38-1710.
71-1,281.01.	Transferred to section 38-1711.
71-1,282.	Repealed. Laws 2007, LB 463, § 1319.
71-1,283.	Repealed. Laws 2003, LB 242, § 154.
71-1,284.	Repealed. Laws 1991, LB 10, § 7.
71-1,285.	Transferred to section 38-1802.
71-1,286.	Transferred to section 38-1803.
71-1,287.	Transferred to section 38-1812.
71-1,288.	Repealed. Laws 2003, LB 242, § 154.
71-1,289.	Transferred to section 38-1813.
71-1,290.	Repealed. Laws 2007, LB 463, § 1319.
71-1,291.	Repealed. Laws 2007, LB 463, § 1319.
71-1,291.01.	Repealed. Laws 2007, LB 463, § 1319.
71-1,292.	Repealed. Laws 2007, LB 463, § 1319.
71-1,293.	Transferred to section 38-1816.
71-1,294.	Repealed. Laws 2007, LB 463, § 1319.
71-1,295.	Transferred to section 38-2102.
71-1,296.	Transferred to section 38-2103.
71-1,297.	Transferred to section 38-2104.
71-1,298.	Transferred to section 38-2105.
71-1,299.	Transferred to section 38-2106.
71-1,300.	Transferred to section 38-2107.
71-1,301.	Transferred to section 38-2108.
71-1,302.	Transferred to section 38-2109.
71-1,303.	Transferred to section 38-2110.
71-1,304.	Transferred to section 38-2111.
71-1,305.	Transferred to section 38-2112.
71-1,305.01.	Transferred to section 38-2113.
71-1,306.	Transferred to section 38-2114.
71-1,307.	Transferred to section 38-2115.
71-1,308.	Transferred to section 38-2116.
71-1,309.	Transferred to section 38-2117.
71-1,310.	Transferred to section 38-2118.
71-1,311.	Transferred to section 38-2119.
71-1,312.	Transferred to section 38-2121.
71-1,313.	Repealed. Laws 2007, LB 463, § 1319.
71-1,314.	Transferred to section 38-2122.
71-1,314.01.	Transferred to section 38-2123.
71-1,314.02.	Transferred to section 38-2124.
71-1,315.	Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,316.	Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,317.	Transferred to section 38-2126.
71-1,318.	Transferred to section 38-2127.

## LICENSES; PROFESSIONAL AND OCCUPATIONAL

Section	
71-1,319.	Transferred to section 38-2128.
71-1,319.01.	Transferred to section 38-2129.
71-1,320.	Repealed. Laws 2007, LB 463, § 1319.
71-1,321.	Repealed. Laws 2007, LB 463, § 1319.
71-1,322.	Repealed. Laws 2007, LB 463, § 1319.
71-1,323.	Transferred to section 38-2131.
71-1,324.	Repealed. Laws 2007, LB 463, § 1319.
71-1,325.	Transferred to section 38-2132.
71-1,326.	Repealed. Laws 2007, LB 463, § 1319.
71-1,327.	Repealed. Laws 2007, LB 463, § 1319.
71-1,328.	Repealed. Laws 2007, LB 463, § 1319.
71-1,329.	Transferred to section 38-2133.
71-1,330.	Repealed. Laws 2007, LB 463, § 1319.
71-1,331.	Repealed. Laws 2007, LB 463, § 1319.
71-1,332.	Transferred to section 38-2134.
71-1,333.	Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,334.	Repealed. Laws 2003, LB 242, § 154.
71-1,335.	Transferred to section 38-2136.
71-1,336.	Transferred to section 38-2137.
71-1,337.	Transferred to section 38-2138.
71-1,338.	Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,339.	Transferred to section 38-1,137.
71-1,340.	Repealed. Laws 2007, LB 463, § 1319.
71-1,341.	Repealed. Laws 2007, LB 463, § 1319.
71-1,342.	Repealed. Laws 2007, LB 463, § 1319.
71-1,343.	Transferred to section 38-128.
71-1,344.	Transferred to section 38-2006.
71-1,345.	Transferred to section 38-2057.
71-1,346.	Transferred to section 38-2058.
71-1,347.	Transferred to section 38-2059.
71-1,348.	Transferred to section 38-2060.
71-1,349.	Repealed. Laws 2007, LB 463, § 1319.
71-1,350.	Repealed. Laws 2003, LB 242, § 154.
71-1,351.	Transferred to section 38-302.
71-1,352.	Transferred to section 38-311.
71-1,353.	Transferred to section 38-312.
71-1,354.	Transferred to section 38-313.
71-1,355.	Transferred to section 38-314.
71-1,356.	Transferred to section 38-315.
71-1,357.	Transferred to section 38-316.
71-1,358.	Transferred to section 38-317.
71-1,359.	Transferred to section 38-318.
71-1,360.	Repealed. Laws 2007, LB 463, § 1319.
71-1,361.	Transferred to section 38-321.
71-1,362.	Transferred to section 38-2901.
71-1,363.	Transferred to section 38-2902.
71-1,364.	Transferred to section 38-2903.
71-1,365.	Transferred to section 38-2904.
71-1,366.	Transferred to section 38-2905.
71-1,367.	Repealed. Laws 2007, LB 463, § 1319.
71-1,368.	Transferred to section 38-2906.
71-1,369.	Transferred to section 38-2907.
71-1,370.	Transferred to section 38-2908.
71-1,371.	Transferred to section 38-2909.
71-1,372.	Transferred to section 38-2910.
71-1,373.	Transferred to section 38-2911.
71-1,374.	Transferred to section 38-2912.
71-1,375.	Transferred to section 38-2913.
71-1,376.	Transferred to section 38-2914.
71-1,377.	Transferred to section 38-2915.
71-1,378.	Transferred to section 38-2916.

Section	
71-1,379.	Transferred to section 38-2917.
71-1,380.	Transferred to section 38-2918.
71-1,381.	Transferred to section 38-2919.
71-1,382.	Transferred to section 38-2920.
71-1,383.	Transferred to section 38-2921.
71-1,384.	Transferred to section 38-2922.
71-1,385.	Transferred to section 38-2927.
71-1,386.	Transferred to section 38-2928.
71-1,387.	Transferred to section 38-2929.
71-1,388.	Transferred to section 38-2926.
71-1,389.	Repealed. Laws 2007, LB 463, § 1319.
71-1,390.	Transferred to section 38-2701.
71-1,391.	Transferred to section 38-2702.
71-1,392.	Transferred to section 38-2703.
71-1,393.	Transferred to section 38-2704.
71-1,394.	Transferred to section 38-2705.
71-1,395.	Transferred to section 38-2706.
71-1,396.	Transferred to section 38-2707.
71-1,397.	Repealed. Laws 2007, LB 247, § 91.
71-1,398.	Transferred to section 38-2709.
71-1,399.	Transferred to section 38-2710.
71-1,400.	Transferred to section 38-2711.
71-1,401.	Transferred to section 38-2712.

**71-101 Transferred to section 38-101.**

**71-101.01 Repealed. Laws 2007, LB 463, § 1319.**

**71-101.02 Repealed. Laws 1988, LB 1100, § 185.**

**71-102 Transferred to section 38-121.**

**71-103 Transferred to section 38-129.**

**71-104 Repealed. Laws 2007, LB 463, § 1319.**

**71-104.01 Transferred to section 38-131.**

**71-105 Transferred to section 38-122.**

**71-106 Repealed. Laws 2007, LB 463, § 1319.**

**71-107 Transferred to section 38-124.**

**71-108 Transferred to section 38-130.**

**71-109 Repealed. Laws 2003, LB 242, § 154.**

**71-110 Transferred to section 38-142.**

**71-110.01 Transferred to section 38-143.**

**71-111 Transferred to section 38-158.**

**71-112 Transferred to section 38-167.**

**71-112.01 Repealed. Laws 2007, LB 463, § 1319.**

**71-112.02 Repealed. Laws 1990, LB 818, § 1.**

**71-112.03 Transferred to section 38-161.**



- 71-112.04 Repealed. Laws 1987, LB 473, § 63.
- 71-112.05 Repealed. Laws 1987, LB 473, § 63.
- 71-112.06 Repealed. Laws 1987, LB 473, § 63.
- 71-113 Transferred to section 38-162.
- 71-114 Transferred to section 38-164.
- 71-115 Repealed. Laws 1987, LB 473, § 63.
- 71-115.01 Transferred to section 38-168.
- 71-115.02 Repealed. Laws 1987, LB 473, § 63.
- 71-115.03 Repealed. Laws 1987, LB 473, § 63.
- 71-115.04 Repealed. Laws 1987, LB 473, § 63.
- 71-116 Transferred to section 38-163.
- 71-117 Transferred to section 38-159.
- 71-118 Transferred to section 38-160.
- 71-119 Repealed. Laws 2007, LB 463, § 1319.
- 71-120 Transferred to section 38-169.
- 71-121 Transferred to section 38-170.
- 71-121.01 Transferred to section 38-174.
- 71-122 Transferred to section 38-171.
- 71-122.01 Repealed. Laws 1986, LB 926, § 65.
- 71-123 Repealed. Laws 2007, LB 463, § 1319.
- 71-124 Transferred to section 38-172.
- 71-124.01 Transferred to section 38-141.
- 71-125 Transferred to section 38-132.
- 71-126 Repealed. Laws 1991, LB 703, § 83.
- 71-127 Repealed. Laws 1986, LB 926, § 65.
- 71-128 Transferred to section 38-133.
- 71-129 Transferred to section 38-135.
- 71-130 Repealed. Laws 1990, LB 1064, § 33.
- 71-131 Transferred to section 38-136.
- 71-132 Repealed. Laws 2007, LB 463, § 1319.
- 71-133 Transferred to section 38-134.

71-134 Repealed. Laws 1988, LB 1100, § 185.

71-134.01 Repealed. Laws 1988, LB 1100, § 185.

71-134.02 Repealed. Laws 1988, LB 1100, § 185.

71-134.03 Repealed. Laws 1988, LB 1100, § 185.

71-135 Repealed. Laws 1990, LB 1064, § 33.

71-136 Repealed. Laws 1990, LB 1064, § 33.

71-137 Repealed. Laws 1990, LB 1064, § 33.

71-138 Transferred to section 38-137.

71-139 Repealed. Laws 2007, LB 463, § 1319.

71-139.01 Repealed. Laws 2007, LB 463, § 1319.

71-139.02 Repealed. Laws 2007, LB 463, § 1319.

71-140 Repealed. Laws 2007, LB 463, § 1319.

71-141 Repealed. Laws 2007, LB 463, § 1319.

71-142 Repealed. Laws 2007, LB 463, § 1319.

71-143 Repealed. Laws 2007, LB 463, § 1319.

71-144 Repealed. Laws 2007, LB 463, § 1319.

71-145 Transferred to section 38-125.

71-146 Repealed. Laws 1980, LB 94, § 19.

71-147 Transferred to section 38-178.

71-147.01 Transferred to section 38-1,128.

71-147.02 Transferred to section 38-183.

71-148 Transferred to section 38-179.

71-149 Transferred to section 38-144.

71-150 Transferred to section 38-185.

71-151 Repealed. Laws 2007, LB 463, § 1319.

71-152 Transferred to section 38-187.

71-153 Transferred to section 38-188.

71-154 Transferred to section 38-189.

71-155 Transferred to section 38-196.

71-155.01 Transferred to section 38-1,101.

- 71-155.02 Repealed. Laws 1988, LB 1100, § 185.
- 71-155.03 Transferred to section 38-198.
- 71-156 Transferred to section 38-191.
- 71-157 Transferred to section 38-194.
- 71-158 Transferred to section 38-195.
- 71-159 Transferred to section 38-1,102.
- 71-160 Repealed. Laws 2007, LB 463, § 1319.
- 71-161 Repealed. Laws 1988, LB 352, § 190.
- 71-161.01 Transferred to section 38-177.
- 71-161.02 Transferred to section 38-197.
- 71-161.03 Transferred to section 38-190.
- 71-161.04 Transferred to section 38-148.
- 71-161.05 Repealed. Laws 2007, LB 463, § 1319.
- 71-161.06 Transferred to section 38-149.
- 71-161.07 Repealed. Laws 2007, LB 463, § 1319.
- 71-161.08 Repealed. Laws 1988, LB 1100, § 185.
- 71-161.09 Transferred to section 38-145.
- 71-161.10 Transferred to section 38-146.
- 71-161.11 Transferred to section 38-1,109.
- 71-161.12 Repealed. Laws 2007, LB 463, § 1319.
- 71-161.13 Transferred to section 38-1,110.
- 71-161.14 Transferred to section 38-1,111.
- 71-161.15 Transferred to section 38-1,112.
- 71-161.16 Transferred to section 38-1,113.
- 71-161.17 Repealed. Laws 2007, LB 463, § 1319.
- 71-161.18 Repealed. Laws 2007, LB 463, § 1319.
- 71-161.19 Transferred to section 38-173.
- 71-161.20 Repealed. Laws 2007, LB 463, § 1319.
- 71-162 Transferred to section 38-151.
- 71-162.01 Transferred to section 38-152.
- 71-162.02 Transferred to section 38-153.

- 71-162.03 Transferred to section 38-154.
- 71-162.04 Transferred to section 38-155.
- 71-162.05 Transferred to section 38-156.
- 71-163 Transferred to section 38-157.
- 71-164 Transferred to section 38-1,114.
- 71-164.01 Transferred to section 38-1,116.
- 71-165 Repealed. Laws 2007, LB 463, § 1319.
- 71-166 Transferred to section 38-1,117.
- 71-167 Transferred to section 38-1,118.
- 71-168 Transferred to section 38-1,124.
- 71-168.01 Transferred to section 38-1,138.
- 71-168.02 Transferred to section 38-1,127.
- 71-169 Transferred to section 38-126.
- 71-170 Transferred to section 38-127.
- 71-171 Transferred to section 38-1,139.
- 71-171.01 Transferred to section 38-1,107.
- 71-171.02 Transferred to section 38-1,108.
- 71-172 Repealed. Laws 2007, LB 463, § 1319.
- 71-172.01 Transferred to section 38-175.
- 71-172.02 Repealed. Laws 2007, LB 463, § 1319.
- 71-173 Transferred to section 38-3006.
- 71-174 Transferred to section 38-3007.
- 71-174.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-174.02 Transferred to section 38-3011.
- 71-175 Transferred to section 38-3008.
- 71-175.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-176 Transferred to section 38-3010.
- 71-176.01 Transferred to section 38-3012.
- 71-176.02 Repealed. Laws 1972, LB 1044, § 1.
- 71-176.03 Repealed. Laws 2007, LB 463, § 1319.
- 71-177 Transferred to section 38-805.

- 71-178 Transferred to section 38-806.
- 71-179 Transferred to section 38-807.
- 71-179.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-180 Transferred to section 38-803.
- 71-180.01 Repealed. Laws 1988, LB 1100, § 185.
- 71-180.02 Repealed. Laws 1988, LB 1100, § 185.
- 71-180.03 Repealed. Laws 1988, LB 1100, § 185.
- 71-180.04 Repealed. Laws 1988, LB 1100, § 185.
- 71-180.05 Repealed. Laws 1988, LB 1100, § 185.
- 71-181 Transferred to section 38-809.
- 71-182 Transferred to section 38-811.
- 71-183 Transferred to section 38-1115.
- 71-183.01 Transferred to section 38-1116.
- 71-183.02 Transferred to section 38-1107.
- 71-184 Repealed. Laws 2007, LB 463, § 1319.
- 71-185 Transferred to section 38-1117.
- 71-185.01 Transferred to section 38-1125.
- 71-185.02 Transferred to section 38-1123.
- 71-185.03 Transferred to section 38-1124.
- 71-186 Repealed. Laws 2007, LB 463, § 1319.
- 71-187 Repealed. Laws 1986, LB 926, § 65.
- 71-188 Repealed. Laws 2007, LB 463, § 1319.
- 71-189 Transferred to section 38-1127.
- 71-190 Transferred to section 38-1128.
- 71-191 Transferred to section 38-1129.
- 71-192 Repealed. Laws 1988, LB 1100, § 185.
- 71-193 Repealed. Laws 1971, LB 587, § 15.
- 71-193.01 Transferred to section 38-1149.
- 71-193.02 Transferred to section 38-1150.
- 71-193.03 Transferred to section 38-1151.
- 71-193.04 Transferred to section 38-1118.

71-193.05 Repealed. Laws 2007, LB 463, § 1319.

71-193.06 Repealed. Laws 1971, LB 587, § 15.

71-193.07 Repealed. Laws 1971, LB 587, § 15.

71-193.08 Repealed. Laws 1971, LB 587, § 15.

71-193.09 Repealed. Laws 1986, LB 572, § 8.

71-193.10 Repealed. Laws 1971, LB 587, § 15.

71-193.11 Repealed. Laws 1953, c. 238, § 7.

71-193.12 Repealed. Laws 1971, LB 587, § 15.

71-193.13 Transferred to section 38-1135.

71-193.14 Transferred to section 38-1136.

71-193.15 Transferred to section 38-1130.

71-193.16 Repealed. Laws 2007, LB 463, § 1319.

71-193.17 Transferred to section 38-1131.

71-193.18 Transferred to section 38-1132.

71-193.19 Transferred to section 38-1133.

71-193.20 Transferred to section 38-1134.

71-193.21 Repealed. Laws 2007, LB 463, § 1319.

71-193.22 Repealed. Laws 2007, LB 463, § 1319.

71-193.23 Transferred to section 38-1137.

71-193.24 Repealed. Laws 2007, LB 463, § 1319.

71-193.25 Transferred to section 38-1138.

71-193.26 Transferred to section 38-1139.

71-193.27 Transferred to section 38-1140.

71-193.28 Transferred to section 38-1142.

71-193.29 Transferred to section 38-1141.

71-193.30 Transferred to section 38-1144.

71-193.31 Transferred to section 38-1145.

71-193.32 Transferred to section 38-1146.

71-193.33 Transferred to section 38-1143.

71-193.34 Transferred to section 38-1147.

71-193.35 Transferred to section 38-1148.

- 71-194 Transferred to section 71-1301.
- 71-195 Transferred to section 71-1302.
- 71-196 Transferred to section 71-1303.
- 71-197 Repealed. Laws 1980, LB 94, § 19.
- 71-198 Transferred to section 71-1304.
- 71-199 Transferred to section 71-1305.
- 71-1,100 Transferred to section 71-1306.
- 71-1,101 Repealed. Laws 1993, LB 187, § 39.
- 71-1,102 Transferred to section 38-2024.
- 71-1,103 Transferred to section 38-2025.
- 71-1,104 Transferred to section 38-2026.
- 71-1,104.01 Transferred to section 71-551.
- 71-1,104.02 Repealed. Laws 1991, LB 456, § 40.
- 71-1,104.03 Repealed. Laws 1991, LB 456, § 40.
- 71-1,104.04 Repealed. Laws 1991, LB 456, § 40.
- 71-1,104.05 Repealed. Laws 1991, LB 456, § 40.
- 71-1,104.06 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,105 Transferred to section 38-2004.
- 71-1,106 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,106.01 Repealed. Laws 2009, LB 195, § 111.
- 71-1,107 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.01 Transferred to section 38-2002.
- 71-1,107.02 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.03 Transferred to section 38-2038.
- 71-1,107.04 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.05 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.06 Transferred to section 38-2042.
- 71-1,107.07 Transferred to section 38-2039.
- 71-1,107.08 Transferred to section 38-2040.
- 71-1,107.09 Transferred to section 38-2041.

- 71-1,107.10 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.11 Transferred to section 38-2043.
- 71-1,107.12 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.13 Transferred to section 38-2044.
- 71-1,107.14 Transferred to section 38-2045.
- 71-1,107.15 Transferred to section 38-2046.
- 71-1,107.16 Transferred to section 38-2014.
- 71-1,107.17 Transferred to section 38-2047.
- 71-1,107.18 Transferred to section 38-2048.
- 71-1,107.19 Transferred to section 38-2049.
- 71-1,107.20 Transferred to section 38-2050.
- 71-1,107.21 Transferred to section 38-2052.
- 71-1,107.22 Repealed. Laws 1981, LB 545, § 52.
- 71-1,107.23 Transferred to section 38-2051.
- 71-1,107.24 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.25 Transferred to section 38-2056.
- 71-1,107.26 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.27 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.28 Transferred to section 38-2053.
- 71-1,107.29 Transferred to section 38-2054.
- 71-1,107.30 Transferred to section 38-2055.
- 71-1,108 Repealed. Laws 1953, c. 245, § 21.
- 71-1,109 Repealed. Laws 1953, c. 245, § 21.
- 71-1,110 Repealed. Laws 1953, c. 245, § 21.
- 71-1,111 Repealed. Laws 1953, c. 245, § 21.
- 71-1,112 Repealed. Laws 1953, c. 245, § 21.
- 71-1,113 Repealed. Laws 1953, c. 245, § 21.
- 71-1,114 Repealed. Laws 1953, c. 245, § 21.
- 71-1,115 Repealed. Laws 1953, c. 245, § 21.
- 71-1,115.01 Repealed. Laws 1953, c. 245, § 21.
- 71-1,115.02 Repealed. Laws 1953, c. 245, § 21.



- 71-1,115.03 Repealed. Laws 1953, c. 245, § 21.
- 71-1,116 Repealed. Laws 1953, c. 245, § 21.
- 71-1,117 Repealed. Laws 1953, c. 245, § 21.
- 71-1,118 Repealed. Laws 1953, c. 245, § 21.
- 71-1,119 Repealed. Laws 1953, c. 245, § 21.
- 71-1,120 Repealed. Laws 1953, c. 245, § 21.
- 71-1,121 Repealed. Laws 1953, c. 245, § 21.
- 71-1,122 Repealed. Laws 1953, c. 245, § 21.
- 71-1,123 Repealed. Laws 1953, c. 245, § 21.
- 71-1,124 Repealed. Laws 1953, c. 245, § 21.
- 71-1,125 Repealed. Laws 1953, c. 245, § 21.
- 71-1,126 Repealed. Laws 1953, c. 245, § 21.
- 71-1,127 Repealed. Laws 1953, c. 245, § 21.
- 71-1,128 Repealed. Laws 1953, c. 245, § 21.
- 71-1,129 Repealed. Laws 1953, c. 245, § 21.
- 71-1,130 Repealed. Laws 1953, c. 245, § 21.
- 71-1,131 Repealed. Laws 1953, c. 245, § 21.
- 71-1,132 Repealed. Laws 1953, c. 245, § 21.
- 71-1,132.01 Transferred to section 38-2201.
- 71-1,132.02 Act, expired.
- 71-1,132.03 Act, expired.
- 71-1,132.04 Transferred to section 38-2217.
- 71-1,132.05 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.06 Transferred to section 38-2218.
- 71-1,132.07 Transferred to section 38-2213.
- 71-1,132.08 Transferred to section 38-2214.
- 71-1,132.09 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.10 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.11 Transferred to section 38-2216.
- 71-1,132.12 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.13 Transferred to section 38-2220.

- 71-1,132.14 Transferred to section 38-2222.
- 71-1,132.15 Transferred to section 38-2223.
- 71-1,132.16 Transferred to section 38-2225.
- 71-1,132.17 Transferred to section 38-2228.
- 71-1,132.18 Transferred to section 38-2229.
- 71-1,132.19 Transferred to section 38-2224.
- 71-1,132.20 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.21 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.22 Repealed. Laws 2003, LB 242, § 154.
- 71-1,132.23 Repealed. Laws 1976, LB 692, § 6.
- 71-1,132.24 Transferred to section 38-2232.
- 71-1,132.25 Transferred to section 38-2233.
- 71-1,132.26 Transferred to section 38-2234.
- 71-1,132.27 Transferred to section 38-2235.
- 71-1,132.28 Transferred to section 38-2236.
- 71-1,132.29 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.30 Transferred to section 38-2219.
- 71-1,132.31 Transferred to section 38-2215.
- 71-1,132.32 Repealed. Laws 1983, LB 472, § 8.
- 71-1,132.33 Repealed. Laws 1983, LB 472, § 8.
- 71-1,132.34 Repealed. Laws 1983, LB 472, § 8.
- 71-1,132.35 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.36 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.37 Transferred to section 38-2221.
- 71-1,132.38 Transferred to section 38-2231.
- 71-1,132.39 Repealed. Laws 1975, LB 422, § 21.
- 71-1,132.40 Repealed. Laws 1975, LB 422, § 21.
- 71-1,132.41 Transferred to section 38-2230.
- 71-1,132.42 Repealed. Laws 1975, LB 422, § 21.
- 71-1,132.43 Repealed. Laws 1978, LB 756, § 59.
- 71-1,132.44 Repealed. Laws 1983, LB 472, § 8.

- 71-1,132.45 Repealed. Laws 1983, LB 472, § 8.
- 71-1,132.46 Repealed. Laws 1983, LB 472, § 8.
- 71-1,132.47 Repealed. Laws 2003, LB 242, § 154.
- 71-1,132.48 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.49 Repealed. Laws 2003, LB 242, § 154.
- 71-1,132.50 Repealed. Laws 2003, LB 242, § 154.
- 71-1,132.51 Repealed. Laws 1981, LB 379, § 38.
- 71-1,132.52 Repealed. Laws 1995, LB 563, § 50.
- 71-1,132.53 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,133 Transferred to section 38-2605.
- 71-1,134 Transferred to section 38-2607.
- 71-1,135 Transferred to section 38-2608.
- 71-1,135.01 Transferred to section 38-2604.
- 71-1,135.02 Transferred to section 38-2613.
- 71-1,135.03 Repealed. Laws 2007, LB 236, § 47.
- 71-1,135.04 Transferred to section 38-2610.
- 71-1,135.05 Repealed. Laws 2007, LB 236, § 47.
- 71-1,135.06 Transferred to section 38-2617.
- 71-1,135.07 Transferred to section 38-2618.
- 71-1,136 Transferred to section 38-2616.
- 71-1,136.01 Transferred to section 38-2611.
- 71-1,136.02 Repealed. Laws 2003, LB 242, § 154.
- 71-1,136.03 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,136.04 Transferred to section 38-2619.
- 71-1,136.05 Transferred to section 38-2620.
- 71-1,136.06 Transferred to section 38-2621.
- 71-1,136.07 Transferred to section 38-2622.
- 71-1,136.08 Transferred to section 38-2623.
- 71-1,136.09 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,137 Transferred to section 38-2029.
- 71-1,138 Transferred to section 38-2030.

- 71-1,139 Transferred to section 38-2031.
- 71-1,139.01 Transferred to section 38-2032.
- 71-1,140 Transferred to section 38-2005.
- 71-1,140.01 Repealed. Laws 1969, c. 565, § 6.
- 71-1,140.02 Repealed. Laws 1969, c. 565, § 6.
- 71-1,140.03 Repealed. Laws 1969, c. 565, § 6.
- 71-1,141 Transferred to section 38-2033.
- 71-1,142 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,143 Transferred to section 38-2850.
- 71-1,143.01 Transferred to section 38-2851.
- 71-1,143.02 Transferred to section 38-2853.
- 71-1,143.03 Transferred to section 38-2866.
- 71-1,144 Transferred to section 38-2854.
- 71-1,144.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,144.02 Repealed. Laws 2000, LB 1135, § 34.
- 71-1,144.03 Repealed. Laws 2002, LB 1021, § 111.
- 71-1,144.04 Repealed. Laws 2002, LB 1021, § 111.
- 71-1,144.05 Repealed. Laws 2002, LB 1021, § 111.
- 71-1,145 Transferred to section 71-1,143.01.
- 71-1,145.01 Transferred to section 71-1,143.02.
- 71-1,146 Transferred to section 38-2804.
- 71-1,146.01 Transferred to section 38-2870.
- 71-1,146.02 Transferred to section 38-2871.
- 71-1,147 Transferred to section 38-2867.
- 71-1,147.01 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.02 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.03 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.04 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.05 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.06 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.07 Repealed. Laws 2000, LB 819, § 163.

- 71-1,147.08 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.09 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.10 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.11 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.12 Repealed. Laws 2000, LB 819, § 163.
- 71-1,147.13 Transferred to section 38-28,103.
- 71-1,147.14 Repealed. Laws 2001, LB 398, § 96.
- 71-1,147.15 Repealed. Laws 2008, LB 308, § 18.
- 71-1,147.16 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.17 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.18 Transferred to section 38-2846.
- 71-1,147.19 Transferred to section 38-2824.
- 71-1,147.20 Transferred to section 38-2803.
- 71-1,147.21 Transferred to section 38-2805.
- 71-1,147.22 Transferred to section 38-2855.
- 71-1,147.23 Transferred to section 38-2856.
- 71-1,147.24 Transferred to section 38-2857.
- 71-1,147.25 Transferred to section 38-2858.
- 71-1,147.26 Transferred to section 38-2859.
- 71-1,147.27 Transferred to section 38-2860.
- 71-1,147.28 Transferred to section 38-2861.
- 71-1,147.29 Transferred to section 38-2862.
- 71-1,147.30 Transferred to section 38-2863.
- 71-1,147.31 Transferred to section 38-2864.
- 71-1,147.32 Transferred to section 38-2865.
- 71-1,147.33 Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.34 Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.35 Transferred to section 38-2869.
- 71-1,147.36 Transferred to section 38-2868.
- 71-1,147.37 Repealed. Laws 1999, LB 594, § 75.
- 71-1,147.38 Repealed. Laws 1999, LB 594, § 75.

- 71-1,147.39 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.40 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.41 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.42 Transferred to section 38-2875.
- 71-1,147.43 Transferred to section 38-2876.
- 71-1,147.44 Transferred to section 38-2877.
- 71-1,147.45 Transferred to section 38-2878.
- 71-1,147.46 Transferred to section 38-2879.
- 71-1,147.47 Transferred to section 38-2880.
- 71-1,147.48 Transferred to section 38-2881.
- 71-1,147.49 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.50 Transferred to section 38-2882.
- 71-1,147.51 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.52 Transferred to section 38-2883.
- 71-1,147.53 Transferred to section 38-2884.
- 71-1,147.54 Transferred to section 38-2885.
- 71-1,147.55 Transferred to section 38-2886.
- 71-1,147.56 Transferred to section 38-2887.
- 71-1,147.57 Transferred to section 38-2888.
- 71-1,147.58 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.59 Transferred to section 38-2889.
- 71-1,147.60 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.61 Repealed. Laws 2001, LB 398, § 97.
- 71-1,147.62 Transferred to section 38-2872.
- 71-1,147.63 Transferred to section 38-2873.
- 71-1,147.64 Transferred to section 38-2874.
- 71-1,147.65 Transferred to section 38-2890.
- 71-1,147.66 Transferred to section 38-2891.
- 71-1,147.67 Transferred to section 38-2892.
- 71-1,147.68 Transferred to section 38-2893.
- 71-1,147.69 Transferred to section 38-2894.

- 71-1,147.70 Transferred to section 38-2895.
- 71-1,147.71 Transferred to section 38-2896.
- 71-1,147.72 Transferred to section 38-2897.
- 71-1,148 Transferred to section 38-2899.
- 71-1,149 Transferred to section 38-28,100.
- 71-1,150 Repealed. Laws 2003, LB 242, § 154.
- 71-1,151 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,152 Repealed. Laws 1967, c. 439, § 18.
- 71-1,152.01 Transferred to section 38-3320.
- 71-1,153 Transferred to section 38-3301.
- 71-1,154 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,155 Transferred to section 38-3321.
- 71-1,156 Repealed. Laws 1987, LB 473, § 63.
- 71-1,157 Transferred to section 38-3323.
- 71-1,158 Transferred to section 38-3322.
- 71-1,159 Repealed. Laws 1987, LB 473, § 63.
- 71-1,160 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,161 Repealed. Laws 2005, LB 301, § 78.
- 71-1,162 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,163 Transferred to section 38-3324.
- 71-1,164 Transferred to section 38-3330.
- 71-1,165 Transferred to section 38-3325.
- 71-1,166 Transferred to section 38-3326.
- 71-1,167 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,168 Repealed. Laws 2000, LB 833, § 12.
- 71-1,169 Repealed. Laws 2000, LB 833, § 12.
- 71-1,170 Repealed. Laws 2000, LB 833, § 12.
- 71-1,171 Repealed. Laws 2000, LB 833, § 12.
- 71-1,172 Repealed. Laws 2000, LB 833, § 12.
- 71-1,173 Repealed. Laws 2000, LB 833, § 12.
- 71-1,174 Repealed. Laws 2000, LB 833, § 12.

- 71-1,175 Repealed. Laws 2000, LB 833, § 12.
- 71-1,176 Repealed. Laws 2000, LB 833, § 12.
- 71-1,177 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,178 Repealed. Laws 2000, LB 833, § 12.
- 71-1,179 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,180 Repealed. Laws 2000, LB 833, § 12.
- 71-1,181 Repealed. Laws 2000, LB 833, § 12.
- 71-1,182 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,183 Repealed. Laws 2000, LB 833, § 12.
- 71-1,184 Repealed. Laws 2000, LB 833, § 12.
- 71-1,185 Repealed. Laws 2000, LB 833, § 12.
- 71-1,186 Transferred to section 38-502.
- 71-1,186.01 Repealed. Laws 2007, LB 247, § 92.
- 71-1,187 Transferred to section 38-511.
- 71-1,188 Transferred to section 38-513.
- 71-1,189 Transferred to section 38-514.
- 71-1,190 Transferred to section 38-515.
- 71-1,190.01 Repealed. Laws 2007, LB 247, § 92.
- 71-1,191 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,192 Repealed. Laws 2007, LB 247, § 92.
- 71-1,193 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,194 Transferred to section 38-518.
- 71-1,195 Repealed. Laws 1985, LB 129, § 36.
- 71-1,195.01 Transferred to section 38-519.
- 71-1,195.02 Transferred to section 38-520.
- 71-1,195.03 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
- 71-1,195.04 Transferred to section 38-521.
- 71-1,195.05 Transferred to section 38-522.
- 71-1,195.06 Transferred to section 38-523.
- 71-1,195.07 Transferred to section 38-524.
- 71-1,195.08 Transferred to section 38-525.



- 71-1,195.09 Transferred to section 38-526.
- 71-1,196 Transferred to section 38-512.
- 71-1,197 Repealed. Laws 1985, LB 129, § 36.
- 71-1,197.01 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,198 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,199 Transferred to section 38-1,129.
- 71-1,200 Transferred to section 38-1,130.
- 71-1,201 Transferred to section 38-1,133.
- 71-1,202 Transferred to section 38-1,134.
- 71-1,203 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,204 Transferred to section 38-1,135.
- 71-1,205 Transferred to section 38-1,136.
- 71-1,206 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,206.01 Transferred to section 38-3102.
- 71-1,206.02 Transferred to section 38-3103.
- 71-1,206.03 Transferred to section 38-3104.
- 71-1,206.04 Transferred to section 38-3105.
- 71-1,206.05 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.06 Transferred to section 38-3106.
- 71-1,206.07 Transferred to section 38-3107.
- 71-1,206.08 Transferred to section 38-3108.
- 71-1,206.09 Transferred to section 38-3109.
- 71-1,206.10 Transferred to section 38-3110.
- 71-1,206.11 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.12 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.13 Repealed. Laws 2003, LB 242, § 154.
- 71-1,206.14 Transferred to section 38-3111.
- 71-1,206.15 Transferred to section 38-3114.
- 71-1,206.16 Transferred to section 38-3115.
- 71-1,206.17 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.18 Transferred to section 38-3116.

- 71-1,206.19 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.20 Transferred to section 38-3117.
- 71-1,206.21 Transferred to section 38-3118.
- 71-1,206.22 Transferred to section 38-3119.
- 71-1,206.23 Transferred to section 38-3120.
- 71-1,206.24 Transferred to section 38-3128.
- 71-1,206.25 Transferred to section 38-3113.
- 71-1,206.26 Transferred to section 38-3129.
- 71-1,206.27 Transferred to section 38-3130.
- 71-1,206.28 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.29 Transferred to section 38-3131.
- 71-1,206.30 Transferred to section 38-3132.
- 71-1,206.31 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.32 Transferred to section 38-3122.
- 71-1,206.33 Transferred to section 38-3123.
- 71-1,206.34 Transferred to section 38-3124.
- 71-1,206.35 Transferred to section 38-3125.
- 71-1,207 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,208 Transferred to section 71-1,206.11.
- 71-1,209 Transferred to section 71-1,206.12.
- 71-1,210 Transferred to section 71-1,206.13.
- 71-1,211 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,212 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,213 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,214 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,215 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,216 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,217 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,218 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,219 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,220 Transferred to section 71-1,206.28.

- 71-1,221 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,222 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,223 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,224 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,225 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,226 Repealed. Laws 1994, LB 1210, § 192.
- 71-1,227 Transferred to section 38-3206.
- 71-1,228 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,229 Transferred to section 38-3214.
- 71-1,230 Transferred to section 38-3215.
- 71-1,231 Transferred to section 38-3209.
- 71-1,232 Repealed. Laws 2003, LB 245, § 19.
- 71-1,233 Transferred to section 38-3210.
- 71-1,234 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,235 Transferred to section 38-3208.
- 71-1,236 Transferred to section 38-3216.
- 71-1,237 Repealed. Laws 2003, LB 242, § 154.
- 71-1,238 Transferred to section 38-402.
- 71-1,239 Repealed. Laws 1999, LB 178, § 6.
- 71-1,239.01 Transferred to section 38-410.
- 71-1,240 Transferred to section 38-409.
- 71-1,241 Transferred to section 38-411.
- 71-1,242 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,243 Repealed. Laws 2003, LB 242, § 154.
- 71-1,244 Repealed. Laws 1993, LB 669, § 62.
- 71-1,245 Repealed. Laws 1993, LB 669, § 62.
- 71-1,246 Repealed. Laws 1993, LB 669, § 62.
- 71-1,247 Repealed. Laws 1993, LB 669, § 62.
- 71-1,248 Transferred to section 71-1,311.
- 71-1,249 Transferred to section 71-1,300.
- 71-1,250 Transferred to section 71-1,303.

- 71-1,251 Transferred to section 71-1,301.
- 71-1,252 Transferred to section 71-1,304.
- 71-1,253 Repealed. Laws 1993, LB 669, § 62.
- 71-1,254 Repealed. Laws 1993, LB 669, § 62.
- 71-1,255 Transferred to section 71-1,297.
- 71-1,256 Transferred to section 71-1,318.
- 71-1,257 Repealed. Laws 1993, LB 669, § 62.
- 71-1,258 Transferred to section 71-1,319.
- 71-1,259 Repealed. Laws 1993, LB 669, § 62.
- 71-1,260 Transferred to section 71-1,320.
- 71-1,261 Transferred to section 71-1,321.
- 71-1,262 Repealed. Laws 1993, LB 669, § 62.
- 71-1,263 Transferred to section 71-1,322.
- 71-1,264 Transferred to section 71-1,323.
- 71-1,265 Repealed. Laws 1993, LB 669, § 62.
- 71-1,266 Transferred to section 71-1,310.
- 71-1,267 Transferred to section 71-1,324.
- 71-1,268 Repealed. Laws 1993, LB 669, § 62.
- 71-1,269 Transferred to section 71-1,325.
- 71-1,270 Transferred to section 71-1,333.
- 71-1,271 Repealed. Laws 1993, LB 669, § 62.
- 71-1,272 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,273 Transferred to section 71-1,326.
- 71-1,274 Repealed. Laws 1993, LB 669, § 62.
- 71-1,275 Transferred to section 71-1,327.
- 71-1,276 Repealed. Laws 1988, LB 1100, § 185.
- 71-1,277 Transferred to section 71-1,328.
- 71-1,278 Transferred to section 38-1702.
- 71-1,279 Transferred to section 38-1708.
- 71-1,280 Transferred to section 38-1709.
- 71-1,281 Transferred to section 38-1710.

- 71-1,281.01 Transferred to section 38-1711.
- 71-1,282 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,283 Repealed. Laws 2003, LB 242, § 154.
- 71-1,284 Repealed. Laws 1991, LB 10, § 7.
- 71-1,285 Transferred to section 38-1802.
- 71-1,286 Transferred to section 38-1803.
- 71-1,287 Transferred to section 38-1812.
- 71-1,288 Repealed. Laws 2003, LB 242, § 154.
- 71-1,289 Transferred to section 38-1813.
- 71-1,290 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,291 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,291.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,292 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,293 Transferred to section 38-1816.
- 71-1,294 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,295 Transferred to section 38-2102.
- 71-1,296 Transferred to section 38-2103.
- 71-1,297 Transferred to section 38-2104.
- 71-1,298 Transferred to section 38-2105.
- 71-1,299 Transferred to section 38-2106.
- 71-1,300 Transferred to section 38-2107.
- 71-1,301 Transferred to section 38-2108.
- 71-1,302 Transferred to section 38-2109.
- 71-1,303 Transferred to section 38-2110.
- 71-1,304 Transferred to section 38-2111.
- 71-1,305 Transferred to section 38-2112.
- 71-1,305.01 Transferred to section 38-2113.
- 71-1,306 Transferred to section 38-2114.
- 71-1,307 Transferred to section 38-2115.
- 71-1,308 Transferred to section 38-2116.
- 71-1,309 Transferred to section 38-2117.

- 71-1,310 Transferred to section 38-2118.
- 71-1,311 Transferred to section 38-2119.
- 71-1,312 Transferred to section 38-2121.
- 71-1,313 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,314 Transferred to section 38-2122.
- 71-1,314.01 Transferred to section 38-2123.
- 71-1,314.02 Transferred to section 38-2124.
- 71-1,315 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
- 71-1,316 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
- 71-1,317 Transferred to section 38-2126.
- 71-1,318 Transferred to section 38-2127.
- 71-1,319 Transferred to section 38-2128.
- 71-1,319.01 Transferred to section 38-2129.
- 71-1,320 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,321 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,322 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,323 Transferred to section 38-2131.
- 71-1,324 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,325 Transferred to section 38-2132.
- 71-1,326 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,327 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,328 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,329 Transferred to section 38-2133.
- 71-1,330 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,331 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,332 Transferred to section 38-2134.
- 71-1,333 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
- 71-1,334 Repealed. Laws 2003, LB 242, § 154.
- 71-1,335 Transferred to section 38-2136.
- 71-1,336 Transferred to section 38-2137.
- 71-1,337 Transferred to section 38-2138.

71-1,338 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

71-1,339 Transferred to section 38-1,137.

71-1,340 Repealed. Laws 2007, LB 463, § 1319.

71-1,341 Repealed. Laws 2007, LB 463, § 1319.

71-1,342 Repealed. Laws 2007, LB 463, § 1319.

71-1,343 Transferred to section 38-128.

71-1,344 Transferred to section 38-2006.

71-1,345 Transferred to section 38-2057.

71-1,346 Transferred to section 38-2058.

71-1,347 Transferred to section 38-2059.

71-1,348 Transferred to section 38-2060.

71-1,349 Repealed. Laws 2007, LB 463, § 1319.

71-1,350 Repealed. Laws 2003, LB 242, § 154.

71-1,351 Transferred to section 38-302.

71-1,352 Transferred to section 38-311.

71-1,353 Transferred to section 38-312.

71-1,354 Transferred to section 38-313.

71-1,355 Transferred to section 38-314.

71-1,356 Transferred to section 38-315.

71-1,357 Transferred to section 38-316.

71-1,358 Transferred to section 38-317.

71-1,359 Transferred to section 38-318.

71-1,360 Repealed. Laws 2007, LB 463, § 1319.

71-1,361 Transferred to section 38-321.

71-1,362 Transferred to section 38-2901.

71-1,363 Transferred to section 38-2902.

71-1,364 Transferred to section 38-2903.

71-1,365 Transferred to section 38-2904.

71-1,366 Transferred to section 38-2905.

71-1,367 Repealed. Laws 2007, LB 463, § 1319.

71-1,368 Transferred to section 38-2906.

- 71-1,369 Transferred to section 38-2907.
- 71-1,370 Transferred to section 38-2908.
- 71-1,371 Transferred to section 38-2909.
- 71-1,372 Transferred to section 38-2910.
- 71-1,373 Transferred to section 38-2911.
- 71-1,374 Transferred to section 38-2912.
- 71-1,375 Transferred to section 38-2913.
- 71-1,376 Transferred to section 38-2914.
- 71-1,377 Transferred to section 38-2915.
- 71-1,378 Transferred to section 38-2916.
- 71-1,379 Transferred to section 38-2917.
- 71-1,380 Transferred to section 38-2918.
- 71-1,381 Transferred to section 38-2919.
- 71-1,382 Transferred to section 38-2920.
- 71-1,383 Transferred to section 38-2921.
- 71-1,384 Transferred to section 38-2922.
- 71-1,385 Transferred to section 38-2927.
- 71-1,386 Transferred to section 38-2928.
- 71-1,387 Transferred to section 38-2929.
- 71-1,388 Transferred to section 38-2926.
- 71-1,389 Repealed. Laws 2007, LB 463, § 1319.
- 71-1,390 Transferred to section 38-2701.
- 71-1,391 Transferred to section 38-2702.
- 71-1,392 Transferred to section 38-2703.
- 71-1,393 Transferred to section 38-2704.
- 71-1,394 Transferred to section 38-2705.
- 71-1,395 Transferred to section 38-2706.
- 71-1,396 Transferred to section 38-2707.
- 71-1,397 Repealed. Laws 2007, LB 247, § 91.
- 71-1,398 Transferred to section 38-2709.
- 71-1,399 Transferred to section 38-2710.



**71-1,400 Transferred to section 38-2711.**

**71-1,401 Transferred to section 38-2712.**

**ARTICLE 2**

**PRACTICE OF BARBERING**

**Cross References**

**Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.

**Fees of professional boards**, disposition, see sections 33-151 and 33-152.

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

**Section**

- 71-201. Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.
- 71-201.01. Repealed. Laws 1978, LB 722, § 24.
- 71-201.02. Repealed. Laws 1983, LB 87, § 25.
- 71-202. Barbering, defined.
- 71-202.01. Terms, defined.
- 71-203. Barbering; exemptions.
- 71-204. Barber; certificate; qualifications required.
- 71-205. Repealed. Laws 1983, LB 87, § 25.
- 71-205.01. Repealed. Laws 1983, LB 87, § 25.
- 71-206. Repealed. Laws 1983, LB 87, § 25.
- 71-207. Repealed. Laws 1971, LB 1020, § 33.
- 71-207.01. Barber school; application to open; fee.
- 71-207.02. Barber school; application for certificate of registration; proof required; factors to be considered in passing on application.
- 71-208. Barber school or college; requirements for approval; course of instruction; standards set by rules and regulations.
- 71-208.01. Barber school or college; payment of wages, commissions, or gratuities forbidden; operation of barber shop in connection with school or college, prohibited.
- 71-208.02. Barber school; registered instructors and assistants; qualifications.
- 71-208.03. Barber school; services; performed by regularly enrolled students.
- 71-208.04. Barber school or college; bond; conditions; exceptions.
- 71-208.05. Repealed. Laws 1982, LB 592, § 2.
- 71-208.06. Registered barber instructor; license; expiration.
- 71-208.07. Barber instructor; inactive status; renewal of registration; failure to renew for five years; effect.
- 71-208.08. Barber school or college; cosmetologists; barbers; course hours; credit.
- 71-209. Examinations; application; fee.
- 71-210. Examinations; scope; when and where held; reexamination.
- 71-211. Certificates of registration; kinds; issuance; when authorized.
- 71-211.01. Licensee; license expired while serving in armed forces; reinstatement; requirements.
- 71-212. Practice of barbering in another state or country; eligibility to take examination; successive examinations; failure to appear; notice of next regular examination.
- 71-213. Repealed. Laws 1983, LB 87, § 25.
- 71-214. Repealed. Laws 1983, LB 87, § 25.
- 71-215. Certificate of registration; certificate of approval of schools; how and where displayed.
- 71-216. Registered barber instructor, assistant barber instructor, or barber; barber school; renewal of registration or license; barber on inactive status; renewal of license; failure to renew for five years; effect.
- 71-216.01. Applicant; certificate; examination; failure to pass; effect.
- 71-217. Barbering; certificate; denial, suspension, or revocation; grounds.
- 71-218. Certificate; refusal, suspension, or revocation; notice; hearing; powers of board; powers of district court.
- 71-219. Barbering fees; set by board; enumerated.

**§ 71-201****PUBLIC HEALTH AND WELFARE**

## Section

- 71-219.01. Application for license to operate barber school or college; form; contents; transfer; fees.
- 71-219.02. Application for license to establish a barber shop; form; contents; transfer; fees; inspection.
- 71-219.03. Board of Barber Examiners; set fees; manner; annual report.
- 71-219.04. Barber shop or school; reinspection; fees.
- 71-219.05. Barber shop; booth rental permit; application; form; contents; issuance; notice of change of work address.
- 71-220. Violation; penalty.
- 71-220.01. Violation; nuisance; abatement or other relief.
- 71-221. Board of Barber Examiners; established; members; qualifications; terms; appointment; removal.
- 71-222. Board; officers; compensation; records; reports; employees.
- 71-222.01. Director; serve at pleasure of board; salary; qualifications; bond or insurance; premium.
- 71-222.02. Board of Barber Examiners Fund; created; use; investment.
- 71-223. Board; rules and regulations; inspections; record of proceedings.
- 71-223.01. Barber shops and barber schools; sanitary requirements; inspections.
- 71-223.02. Barber schools; sign required; advertising requirements.
- 71-223.03. Repealed. Laws 1982, LB 592, § 2.
- 71-223.04. Class of instruction; temporary permit; issuance; requirements; fee; period valid; bond.
- 71-224. Act, how cited.
- 71-225. Legislative declarations.
- 71-226. Repealed. Laws 1978, LB 722, § 24.
- 71-227. Board; investigate conditions and practices; notice and hearing; order.
- 71-228. Board; practice and procedure in accordance with rules and regulations.
- 71-229. Repealed. Laws 1978, LB 722, § 24.
- 71-230. Board; oaths; witnesses; fees; compel testimony to be given; subpoena; serving of papers by sheriff.
- 71-231. Board; investigations; matters to be considered.
- 71-232. Board; adopt rules and regulations.
- 71-233. Repealed. Laws 1978, LB 722, § 24.
- 71-234. Certificate of registration; board; suspend or revoke; notice; hearing.
- 71-235. Appeal; procedure.
- 71-236. Repealed. Laws 1953, c. 238, § 7.
- 71-237. Expenses of administration; how paid.
- 71-238. Reciprocal licensure agreements; board; powers.
- 71-239. Foreign licenses; recognition; board; powers.
- 71-239.01. Foreign licenses; recognition; licensure without examination; application; form; contents; issuance; appeal.
- 71-240. Board; review foreign licensing requirements.
- 71-241. Board; reciprocal agreement; conditions.
- 71-242. Reciprocal agreement; applicant for licensure or registration; requirements; failure to qualify; effect.
- 71-243. Reciprocal agreement; terminated; when.
- 71-244. License granted under reciprocal agreement; when.
- 71-245. Reciprocal license; provisions applicable.
- 71-246. Reciprocal requirements and disabilities; applicable; when.
- 71-247. Reciprocity; board; establish rules.
- 71-248. Licensee; change of residence; certified statement.
- 71-249. Mobile barber shop; license; requirements.
- 71-250. Mobile barber shop license; application.
- 71-251. Mobile barber shop; application; review; denial; inspection.
- 71-252. Mobile barber shop; operating requirements.
- 71-253. Mobile barber shop license; revocation or expiration; effect.
- 71-254. Mobile barber shop license; change of ownership or mobile unit; effect.
- 71-255. Mobile barber shop; owner liability.

**71-201 Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.**

No person shall practice or attempt to practice barbering without a license issued pursuant to the Barber Act by the board. It shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a licensed barber.

No person, partnership, limited liability company, or corporation shall operate a barber shop or barber school until a license has been obtained for that purpose from the board. If the applicant is an individual, the application shall include the applicant's social security number. No person shall lease space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person without obtaining a booth rental permit as provided in section 71-219.05. All barber shop licenses and booth rental permits shall be issued on or before June 30 of each even-numbered year, shall be effective as of July 1 of each even-numbered year, shall be valid for two years, and shall expire on June 30 of the next succeeding even-numbered year.

Any barber shop which fails to renew its license or any person who fails to renew his or her booth rental permit on or before the expiration date may renew such license or booth rental permit by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber shop or barber school license and any booth rental permit may be suspended, revoked, or denied renewal by the board for violation of any provision of the statutes or any rule or regulation of the board pertaining to the operation or sanitation of barber shops, barber schools, or booths under a booth rental permit after due notice and hearing before the board.

No person, partnership, limited liability company, or corporation shall use the title of barber or barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity is licensed pursuant to the act. No person, partnership, limited liability company, or corporation shall hold itself out as a barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity and the personnel who purport to offer barbering services in association with such person or entity are licensed pursuant to the act.

No person, partnership, limited liability company, or corporation shall display a barber pole or use a barber pole or the image of a barber pole in its advertising unless such person or entity is licensed to provide barbering services pursuant to the act and the display or use of such barber pole or barber pole image is to indicate that the person or entity is offering barbering services.

**Source:** Laws 1927, c. 163, § 1, p. 427; Laws 1929, c. 154, § 1, p. 533; C.S.1929, § 71-2001; R.S.1943, § 71-201; Laws 1957, c. 294, § 1, p. 1053; Laws 1963, c. 409, § 2, p. 1315; Laws 1965, c. 417, § 1, p. 1329; Laws 1971, LB 1020, § 1; Laws 1978, LB 722, § 1; Laws 1983, LB 87, § 14; Laws 1993, LB 121, § 421; Laws 1993, LB 226, § 1; Laws 1996, LB 1044, § 481; Laws 1997, LB 622, § 85; Laws 1997, LB 752, § 164; Laws 2009, LB195, § 53.

**71-201.01 Repealed. Laws 1978, LB 722, § 24.**

**71-201.02 Repealed. Laws 1983, LB 87, § 25.****71-202 Barbering, defined.**

Any one or any combination of the following practices, when done upon the human body by the use of chemical products for cosmetic or grooming purposes and not for the treatment of disease or physical or mental ailments, on any person, other than a member of the immediate family, shall constitute the practice of barbering: (1) Shaving or trimming the beard or cutting the hair; (2) dressing, arranging, styling, curling, waving, straightening, and relaxing of the hair by chemical or mechanical means; (3) giving face and scalp massages or treatment with oils, creams, lotions, or other preparations either by hand, mechanical appliances, or electrical appliances, including the applying of chemical and toiletry preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, neck, or upper part of the body; (4) patterning, fitting, cleaning, styling, coloring, waving, or other similar work upon hair pieces or wigs; and (5) shampooing, bleaching, coloring, rinsing, hair weaving, or similar work upon the hair.

**Source:** Laws 1927, c. 163, § 2, p. 427; C.S.1929, § 71-2002; R.S.1943, § 71-202; Laws 1965, c. 417, § 2, p. 1329; Laws 1971, LB 1020, § 4; Laws 1973, LB 5, § 1; Laws 1978, LB 722, § 2; Laws 1993, LB 226, § 2.

Licensed cosmetologist cutting hair of a lady customer of beauty parlor is not a barber within the definition of this section. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

**71-202.01 Terms, defined.**

For purposes of the Barber Act, unless the context otherwise requires:

- (1) Barber shall mean any person who engages in the practice of any act of barbering;
- (2) Barber pole shall mean a cylinder or pole with alternating stripes of red, white, and blue or any combination of them which run diagonally along the length of the cylinder or pole;
- (3) Barber shop shall mean (a) an establishment or place of business properly licensed as required by the act where one or more persons properly licensed are engaged in the practice of barbering or (b) a mobile barber shop. Barber shop shall not include barber schools or colleges;
- (4) Barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students;
- (5) Board shall mean the Board of Barber Examiners;
- (6) Manager shall mean a licensed barber having control of the barber shop and of the persons working or employed therein;
- (7) License shall mean a certificate of registration issued by the board;
- (8) Barber instructor shall mean a teacher of the barber trade as provided in the act;
- (9) Assistant barber instructor shall mean a teacher of the barbering trade registered as an assistant barber instructor as required by the act;
- (10) Mobile barber shop shall mean a self-contained, self-supporting, enclosed mobile unit licensed under the act as a mobile site for the performance of the practice of barbering by persons licensed under the act;

(11) Registered or licensed barber shall mean a person who has completed the requirements to receive a certificate as a barber and to whom a certificate has been issued;

(12) Secretary of the board shall mean the director appointed by the board who shall keep a record of the proceedings of the board;

(13) Student shall mean a person attending an approved, licensed barber school or college, duly registered with the board as a student engaged in learning and acquiring any and all of the practices of barbering, and who, while learning, performs and assists any of the practices of barbering in a barber school or college; and

(14) Postsecondary barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students who have successfully completed high school or its equivalent as determined by successfully passing a general educational development test prior to admittance.

**Source:** Laws 1971, LB 1020, § 5; Laws 1978, LB 722, § 3; Laws 1983, LB 87, § 15; Laws 1993, LB 226, § 3; Laws 2011, LB46, § 1; Laws 2016, LB842, § 1; Laws 2018, LB731, § 79.  
Operative date January 1, 2019.

#### **71-203 Barbering; exemptions.**

The following persons are exempt from the Barber Act while in the proper discharge of their professional or occupational duties: (1) Persons authorized by the laws of this state to practice medicine and surgery; (2) commissioned medical or surgical officers of the United States military services; (3) registered or licensed practical nurses; and (4) persons engaged in operating or employed in cosmetology establishments, except that nothing contained in this section shall authorize a cosmetologist to perform barbering as defined in section 71-202 in any licensed barber shop.

**Source:** Laws 1927, c. 163, § 3, p. 428; Laws 1929, c. 154, § 2, p. 534; C.S.1929, § 71-2003; R.S.1943, § 71-203; Laws 1963, c. 409, § 3, p. 1316; Laws 1971, LB 1020, § 6; Laws 1978, LB 722, § 4; Laws 1997, LB 622, § 86; Laws 2018, LB731, § 80.  
Operative date July 19, 2018.

Provisions of this section regulating haircutting and providing for a certificate of registration are exclusive in nature. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

#### **71-204 Barber; certificate; qualifications required.**

A person is qualified to receive a certificate of registration to practice barbering (1) who has a diploma showing graduation from high school or an equivalent education as determined by passing a general education development test; (2) who is at least seventeen years of age; (3) who has completed one thousand eight hundred hours of training in a barber school or college; (4) who has graduated from a barber school or college approved by the Board of Barber Examiners; and (5) who has passed an examination conducted by the Board of Barber Examiners to determine his or her fitness to practice barbering.

**Source:** Laws 1927, c. 163, § 4, p. 428; Laws 1929, c. 154, § 3, p. 535; C.S.1929, § 71-2004; R.S.1943, § 71-204; Laws 1963, c. 409, § 4, p. 1317; Laws 1965, c. 417, § 3, p. 1330; Laws 1983, LB 87, § 16;

Laws 1984, LB 900, § 1; Laws 1986, LB 318, § 143; Laws 2018, LB731, § 81.

Operative date July 19, 2018.

**71-205 Repealed. Laws 1983, LB 87, § 25.**

**71-205.01 Repealed. Laws 1983, LB 87, § 25.**

**71-206 Repealed. Laws 1983, LB 87, § 25.**

**71-207 Repealed. Laws 1971, LB 1020, § 33.**

**71-207.01 Barber school; application to open; fee.**

Application for authority to open a new barber school shall be made to the Board of Barber Examiners, on forms to be prescribed by the board, and shall be accompanied by the fee prescribed in section 71-219.

**Source:** Laws 1963, c. 409, § 8, p. 1318.

**71-207.02 Barber school; application for certificate of registration; proof required; factors to be considered in passing on application.**

Every applicant for a certificate of registration to operate a new barber school shall offer proof sufficient to the board that the establishment of such new barber school will not be detrimental to the public welfare. In considering whether the establishment of a new barber school will be detrimental to the public welfare the board shall consider the need for barber school facilities or additional barber school facilities, as the case may be, in the community where the proposed barber school is to be located, giving particular consideration to:

- (1) The economic character of the community;
- (2) The adequacy of existing barber shops and barber schools in that community;
- (3) The ability of the community to support the proposed barber school;
- (4) The character of adjacent communities and the extent to which the establishment of the proposed barber school would draw patrons from such adjacent communities; and
- (5) The social and economic effect of the establishment of a barber school on the community where it is proposed to be located, and on the adjacent communities.

**Source:** Laws 1963, c. 409, § 9, p. 1318.

**71-208 Barber school or college; requirements for approval; course of instruction; standards set by rules and regulations.**

The Legislature finds that, through licensing of barber schools, the Board of Barber Examiners approves barbering programs which lead to a certificate or diploma in Nebraska. No barber school or college shall be approved by the board unless (1)(a) a barber school or college that operates as a postsecondary barber school or college requires, as a prerequisite to admission, high school graduation or its equivalent as determined by successfully passing a general educational development test or (b) a barber school or college that does not operate as a postsecondary barber school or college requires, as a prerequisite to graduation from such school or college, high school graduation or its

equivalent as determined by successfully passing a general educational development test, (2) as a prerequisite to graduation it requires a course of instruction of not less than one thousand eight hundred hours, to be completed in not more than ten hours in any one working day, and (3) the barber school or college meets the standards of the Barber Act and any rules and regulations of the board. Such course of instruction shall include scientific fundamentals for barbering, hygiene, massaging, sterilization, haircutting, and shaving, except that when a barber school or college is a part of a high school accredited by the State Board of Education or the University of Nebraska, the Board of Barber Examiners shall provide in its rules and regulations that credit in the barber school or college shall be given for hours spent and courses pursued in the high school and that credit shall be given for courses in barbering taken in high school prior to formal enrollment in such barber school or college.

**Source:** Laws 1927, c. 163, § 6, p. 429; Laws 1929, c. 154, § 5, p. 536; C.S.1929, § 71-2008; R.S.1943, § 71-208; Laws 1945, c. 166, § 1(1), p. 532; Laws 1957, c. 294, § 3, p. 1054; Laws 1963, c. 409, § 10, p. 1319; Laws 1971, LB 1020, § 9; Laws 1978, LB 722, § 6; Laws 1997, LB 622, § 87; Laws 1999, LB 272, § 21; Laws 2016, LB842, § 2; Laws 2018, LB731, § 82.  
Operative date July 19, 2018.

**71-208.01 Barber school or college; payment of wages, commissions, or gratuities forbidden; operation of barber shop in connection with school or college, prohibited.**

No school or college of barbering shall be approved by the Board of Barber Examiners which shall pay any wages, commissions, or gratuities of any kind to barber students for barber work while in training or while enrolled as students in such school or college. No barber shop shall be operated by or in connection with any barber school or college.

**Source:** Laws 1945, c. 166, § 1(2), p. 533; Laws 1957, c. 294, § 4, p. 1054; Laws 1971, LB 1020, § 10; Laws 2011, LB46, § 2.

**71-208.02 Barber school; registered instructors and assistants; qualifications.**

(1) All instruction in barber schools shall be conducted by registered barber instructors or registered assistant barber instructors.

(2) A person shall be eligible for registration as a barber instructor if:

(a) He or she has completed at least eighteen hours of college credit at or above the postsecondary level, including at least three credit hours each in (i) methods of teaching, (ii) curriculum development, (iii) special vocational needs, (iv) educational psychology, (v) speech communications, and (vi) introduction to business;

(b) He or she has been a licensed and actively practicing barber for the one year immediately preceding application, except that for good cause the board may waive the requirement that the applicant be an actively practicing barber for one year or that such year immediately precede application;

(c) He or she has served as a registered assistant barber instructor under the supervision of an active, full-time, registered barber instructor, as provided in subsection (5) of this section, for one year immediately preceding application

for registration, except that for good cause the board may waive the requirement that such year immediately precede application;

(d) He or she has passed an examination prescribed by the board; and

(e) He or she has paid the fees prescribed by section 71-219.

(3) One registered barber instructor or assistant barber instructor shall be employed for each fifteen students, or fraction thereof, enrolled in a barber school, except that each barber school shall have not less than two instructors, one of whom shall be a registered barber instructor, regardless of the number of students. Additional assistant barber instructors shall be permitted on a working ratio of two assistant barber instructors for every registered barber instructor. A barber school operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon whom work is performed shall not be required to have more than one instructor, regardless of the number of students, which instructor shall be a registered barber instructor.

(4) No student at a barber school shall be permitted to do any practical work upon any person unless a registered barber instructor or registered assistant barber instructor is on the premises and supervising the practical work being performed.

(5)(a) A person shall be eligible for registration as an assistant barber instructor if he or she has paid the fee prescribed by section 71-219, has been a licensed and actively practicing barber for one year, and is currently enrolled or will enroll at the first regular college enrollment date after registration under this section in an educational program leading to completion of the hours required under subsection (2) of this section.

(b) A person registered pursuant to subdivision (a) of this subsection shall serve as an assistant barber instructor under direct supervision, except that he or she may serve as an assistant barber instructor under indirect supervision if:

(i) He or she has completed nine college credit hours, including three credit hours each in methods of teaching, curriculum development, and special vocational needs; and

(ii) He or she has completed one year of instructor training under the direct inhouse supervision of an active, full-time, registered barber instructor or in lieu thereof has completed the requirements of a barber instructor course developed or approved by the board. The board may develop such courses or approve courses developed by educational institutions or other entities which meet requirements established by the board in rules and regulations.

(c) A report of college credits earned pursuant to subsection (2) of this section shall be submitted to the board at the end of each academic year. Registration as an assistant barber instructor shall be renewed in each even-numbered year and shall be valid for three years from the date of registration if the registrant pursues without interruption the educational program described in subsection (2) of this section. A registrant who fails to so maintain such program shall have his or her registration revoked. Any such registration that has been revoked shall be reinstated if all renewal fees have been paid and other registration requirements of this subsection are met.

(6) A person who is a registered barber instructor before September 9, 1993, may continue to practice as a registered barber instructor on and after such date without meeting the changes in the registration requirements of this



section imposed by Laws 1993, LB 226. A person who is a registered assistant barber instructor before September 9, 1993, and who seeks to register as a barber instructor on or after September 9, 1993, may meet the requirements for registration as a barber instructor either as such requirements existed before such date or as such requirements exist on or after such date.

**Source:** Laws 1963, c. 409, § 11, p. 1320; Laws 1965, c. 417, § 4, p. 1330; Laws 1971, LB 22, § 1; Laws 1971, LB 1020, § 11; Laws 1983, LB 87, § 17; Laws 1993, LB 226, § 4; Laws 2009, LB195, § 54.

**71-208.03 Barber school; services; performed by regularly enrolled students.**

All barbering services performed in a barber school shall be entirely performed by regularly enrolled students.

**Source:** Laws 1963, c. 409, § 12, p. 1320.

**71-208.04 Barber school or college; bond; conditions; exceptions.**

Each barber school or college shall at all times keep and maintain in full force and effect a surety bond with a reputable bonding company licensed to do business in the State of Nebraska for the benefit of all of its students, sufficient in amount to insure to such students a refund of any portion of their tuition paid but not used, in the event that the school or college discontinues operations for any reason prior to the time that the student has completed his or her education at the school or college, except that such requirement shall not apply to (1) a barber school or college operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon whom such work is performed or (2) a barber school or college which participates in the assessment program established under sections 85-1654 to 85-1658 relating to the Tuition Recovery Cash Fund.

**Source:** Laws 1963, c. 409, § 13, p. 1320; Laws 1971, LB 1020, § 12; Laws 1999, LB 121, § 1.

**71-208.05 Repealed. Laws 1982, LB 592, § 2.**

**71-208.06 Registered barber instructor; license; expiration.**

The license as a registered barber instructor shall be issued on or before June 30 of each even-numbered year effective as of July 1 of each even-numbered year and shall expire as provided in section 71-216. The license application shall include the applicant's social security number.

**Source:** Laws 1971, LB 1020, § 14; Laws 1997, LB 752, § 165; Laws 2009, LB195, § 55.

**71-208.07 Barber instructor; inactive status; renewal of registration; failure to renew for five years; effect.**

Any barber instructor on inactive status or who withdraws from the active practice of barber instructing may renew his or her registration within five years of its expiration date upon the payment of the required restoration fee. Any barber instructor who fails to renew his or her registration for five

consecutive years shall be required to successfully complete the examination for issuance of a new registration.

**Source:** Laws 1975, LB 66, § 4; Laws 1978, LB 722, § 8; Laws 1993, LB 226, § 5.

**71-208.08 Barber school or college; cosmetologists; barbers; course hours; credit.**

(1) Cosmetologists licensed in the State of Nebraska attending a barber school or college may be given credit of one thousand hours of training applied toward the course hours required for graduation.

(2) Barbers licensed in the State of Nebraska attending a school of cosmetology may be given credit of one thousand hours of training applied toward the course hours required for graduation.

**Source:** Laws 1978, LB 722, § 7; Laws 2018, LB731, § 83.  
Operative date July 19, 2018.

**71-209 Examinations; application; fee.**

Each applicant for an examination shall (1) make application to the Board of Barber Examiners on blank forms prepared and furnished by the board, such application to contain the applicant's social security number and proof under the applicant's oath of the particular qualifications of the applicant; (2) furnish to the board two portrait-type photographs of the applicant at least passport size but not to exceed three by five inches showing a sufficient portion of the applicant's face with sufficient clarity so as to permit the Board of Barber Examiners to identify the applicant, each of which photographs shall be signed by the applicant, one such photograph to accompany the application and to be attached thereto, and one to be returned to the applicant, to be presented to the board when the applicant appears for examination; and (3) pay to the board the required fee. The applicant shall not be entitled to the return of the required fee by reason of his or her failure to report for the examination.

**Source:** Laws 1927, c. 163, § 7, p. 429; C.S.1929, § 71-2009; R.S.1943, § 71-209; Laws 1963, c. 409, § 14, p. 1320; Laws 1971, LB 1020, § 15; Laws 1978, LB 722, § 9; Laws 1997, LB 752, § 166.

**71-210 Examinations; scope; when and where held; reexamination.**

The Board of Barber Examiners shall conduct examinations of applicants for certificates of registration to practice as registered barber instructors and registered barbers, not less than four times each year at such time and places as the board may determine. The examination of applicants for certificates of registration as registered barbers shall include both a practical demonstration and a written test, and shall embrace the subjects usually taught in schools of barbering approved by the board. If the applicant fails either the practical demonstration or the written test, reexamination shall be necessary for only the test that was failed. Every student entering a recognized school must have the date of his or her entrance registered with the board.

**Source:** Laws 1927, c. 163, § 8, p. 429; C.S.1929, § 71-210; R.S.1943, § 71-210; Laws 1963, c. 409, § 15, p. 1321; Laws 1978, LB 722, § 10; Laws 1983, LB 87, § 18.

**71-211 Certificates of registration; kinds; issuance; when authorized.**

Whenever the provisions of sections 71-201 to 71-224 have been complied with, the Board of Barber Examiners shall issue a certificate of registration as a registered barber instructor or registered barber, or a certificate of approval of a barber school.

**Source:** Laws 1927, c. 163, § 9, p. 430; C.S.1929, § 71-2011; R.S.1943, § 71-211; Laws 1963, c. 409, § 16, p. 1321; Laws 1983, LB 87, § 19.

**71-211.01 Licensee; license expired while serving in armed forces; reinstatement; requirements.**

All licensees provided for in the Barber Act whose valid licenses have expired while serving in the armed forces of the United States may have such licenses reinstated without further examination upon their return from the armed forces and payment of the necessary fees, if the request for reinstatement was made to the board within ninety days after discharge from the armed forces. Any licensee requesting reinstatement must accompany such request with a copy of his or her discharge from the armed forces.

**Source:** Laws 1971, LB 1020, § 16; Laws 1997, LB 622, § 88.

**71-212 Practice of barbering in another state or country; eligibility to take examination; successive examinations; failure to appear; notice of next regular examination.**

A person who (1) is of good moral character and temperate habits, (2) has a diploma showing graduation from high school or its equivalent as determined by successfully passing a general educational development test, and (3) has a license and certificate of registration as a practicing barber from another state or country which has substantially the same requirements for licensing or registering barbers as required by the Barber Act, shall upon payment of the required fee be given an examination by the board at the next regular examination to determine his or her fitness to receive a certificate of registration to practice barbering. If any person fails to pass a required examination, he or she shall be entitled to submit himself or herself for examination by the board at the next examination given by the board. If he or she fails at the third examination, no further examination shall be granted. If an applicant fails to appear when requested for an examination, he or she shall be notified by the board as to the time of the next regular examination, at which he or she shall appear.

**Source:** Laws 1927, c. 163, § 10, p. 430; Laws 1929, c. 154, § 6, p. 536; C.S.1929, § 71-2012; R.S.1943, § 71-212; Laws 1957, c. 294, § 5, p. 1055; Laws 1963, c. 409, § 17, p. 1321; Laws 1971, LB 1020, § 17; Laws 1972, LB 1183, § 3; Laws 1978, LB 722, § 11; Laws 1997, LB 622, § 89; Laws 1999, LB 272, § 22.

**71-213 Repealed. Laws 1983, LB 87, § 25.****71-214 Repealed. Laws 1983, LB 87, § 25.****71-215 Certificate of registration; certificate of approval of schools; how and where displayed.**

Every holder of a certificate of registration shall display it in a conspicuous place within the work area of the barber shop. The certificate of approval of a barber school and certificate of registration as a registered barber instructor employed by the school shall be conspicuously displayed on the premises of the school.

**Source:** Laws 1927, c. 163, § 12, p. 432; C.S.1929, § 71-2016; R.S.1943, § 71-215; Laws 1963, c. 409, § 19, p. 1322; Laws 1971, LB 1020, § 19.

**71-216 Registered barber instructor, assistant barber instructor, or barber; barber school; renewal of registration or license; barber on inactive status; renewal of license; failure to renew for five years; effect.**

Every registered barber instructor and licensed barber who continues in active practice or service shall on or before June 30 of each even-numbered year renew his or her license or registration and pay the required fee. Such license or registration shall be effective as of July 1 of each even-numbered year and shall terminate on June 30 of the next succeeding even-numbered year.

Every registered assistant barber instructor shall, subject to the requirements of section 71-208.02, renew his or her registration on or before its expiration date during the period of its validity established by such section and pay the required fee.

Every barber school shall on or before June 30 of each even-numbered year obtain renewal of its license and pay the required fee. Such renewal shall be effective as of July 1 of each even-numbered year and shall expire on June 30 of the next succeeding even-numbered year.

Any licensed barber, registered barber instructor, registered assistant barber instructor, or barber school which fails to renew his, her, or its license or registration on or before the expiration date may renew such license or registration by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber on inactive status or who withdraws from the active practice of barbering may renew his or her license within five years of its expiration date upon the payment of the required restoration fee. Any barber who fails to renew his or her license for five consecutive years shall be required to successfully complete the examination for issuance of a new license.

**Source:** Laws 1927, c. 163, § 13, p. 432; C.S.1929, § 71-2017; R.S.1943, § 71-216; Laws 1963, c. 409, § 20, p. 1323; Laws 1965, c. 417, § 5, p. 1331; Laws 1971, LB 1020, § 20; Laws 1975, LB 66, § 2; Laws 1978, LB 722, § 12; Laws 1983, LB 87, § 20; Laws 1993, LB 226, § 6; Laws 2009, LB195, § 56.

**71-216.01 Applicant; certificate; examination; failure to pass; effect.**

A graduate from a school of barbering who fails to pass a satisfactory examination may take the examination next time that the examination is given by the Board of Barber Examiners without being required to take any further course of study. Should the applicant fail the examination a second time, the applicant shall be required to complete a further course of study of not less than five hundred hours to be completed within three months of not more than

ten hours in any one working day in a school of barbering approved by the Board of Barber Examiners before the applicant may be permitted to take the examination a third time.

**Source:** Laws 1927, c. 163, § 5A, p. 429; C.S.1929, § 71-2007; R.S.1943, § 71-207; Laws 1963, c. 409, § 7, p. 1318; R.R.S.1943, § 71-207; Laws 1971, LB 1020, § 30; Laws 1983, LB 87, § 21.

**71-217 Barbering; certificate; denial, suspension, or revocation; grounds.**

The board may either refuse to issue or renew or may suspend or revoke any certificate of registration or approval for any one or a combination of the following causes: (1) Conviction of a felony shown by a certified copy of the record of the court of conviction; (2) gross malpractice or gross incompetency; (3) continued practice by a person knowingly having an infectious or contagious disease; (4) advertising by means of knowingly false or deceptive statements or in violation of section 71-223.02; (5) advertising, practicing, or attempting to practice under a trade name or any name other than one's own; (6) habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs; (7) immoral or unprofessional conduct; (8) violation of any of the provisions of sections 71-201 to 71-237 or of any valid regulation promulgated by the board pertaining to service charges, sanitation, and the elimination of unfair practices; and (9) any check presented to the board as a fee for either an original license or renewal license or for examination for license or any other fee authorized in sections 71-201 to 71-237 which is returned to the State Treasurer unpaid.

**Source:** Laws 1927, c. 163, § 14, p. 432; C.S.1929, § 71-2018; R.S.1943, § 71-217; Laws 1945, c. 166, § 2, p. 533; Laws 1961, c. 388, § 3, p. 1060; Laws 1963, c. 409, § 21, p. 1323; Laws 1983, LB 87, § 22; Laws 1996, LB 1044, § 482; Laws 1997, LB 622, § 90.

**71-218 Certificate; refusal, suspension, or revocation; notice; hearing; powers of board; powers of district court.**

The Board of Barber Examiners may not refuse to renew, suspend, or revoke any certificate of registration or approval under the provisions of section 71-217 unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing by the board. Upon the hearing of any such proceeding, the board may administer oaths and may procure, by its subpoena, the attendance of witnesses and the production of relevant books and papers. Any district court, or any judge of the district court, either in term time or in vacation, upon application either of the accused or of the board may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the board in any hearing relating to the refusal, suspension or revocation of certificates of registration or approval.

**Source:** Laws 1927, c. 163, § 15, p. 433; C.S.1929, § 71-2019; R.S.1943, § 71-218; Laws 1963, c. 409, § 22, p. 1324; Laws 1978, LB 722, § 13.

**71-219 Barbering fees; set by board; enumerated.**

The board shall set the fees to be paid:

- (1) By an applicant for an examination to determine his or her fitness to receive a license to practice barbering or a registration as a barber instructor and for the issuance of the license or registration;
- (2) By an applicant for registration as an assistant barber instructor;
- (3) For the renewal of a license to practice barbering and for restoration of an inactive license;
- (4) For the renewal of a registration to practice as a barber instructor and for the restoration of an inactive registration;
- (5) For renewal of a registration to practice as an assistant barber instructor;
- (6) For late renewal of a license issued under the Barber Act;
- (7) For an application for a license to establish a barber shop or barber school and for the issuance of a license;
- (8) For the transfer of license or change of ownership of a barber shop or barber school;
- (9) For renewal of a barber license, barber instructor registration, barber shop license, or barber school license;
- (10) For an application for a temporary license to conduct classes of instruction in barbering;
- (11) For an affidavit for purposes of reciprocity or for issuance of a certification of licensure for purposes of reciprocity;
- (12) For an application for licensure without examination pursuant to section 71-239.01 and for the issuance of a license pursuant to such section;
- (13) For issuance of a booth rental permit under section 71-219.05;
- (14) For the sale of listings or labels; and
- (15) For a returned check because of insufficient funds or no funds.

**Source:** Laws 1927, c. 163, § 16, p. 433; Laws 1929, c. 154, § 8, p. 537; C.S.1929, § 71-2020; Laws 1933, c. 121, § 1, p. 490; C.S.Supp.,1941, § 71-2020; R.S.1943, § 71-219; Laws 1953, c. 238, § 6, p. 827; Laws 1957, c. 294, § 7, p. 1056; Laws 1963, c. 409, § 23, p. 1324; Laws 1965, c. 417, § 6, p. 1332; Laws 1971, LB 1020, § 21; Laws 1972, LB 1183, § 4; Laws 1975, LB 66, § 3; Laws 1978, LB 722, § 14; Laws 1983, LB 87, § 23; Laws 1993, LB 226, § 7; Laws 2009, LB195, § 57.

Repeal of former act was valid. Day v. Walker, 124 Neb. 500, 247 N.W. 350 (1933).

**71-219.01 Application for license to operate barber school or college; form; contents; transfer; fees.**

Application for a license to operate a barber school or college shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, instructors, number of students, and other data concerning such business as may be required by the board. The board shall collect, in addition to the approval fee, a fee in an amount set by the board for every barber school opened after August 27, 1971. The fee for approval of a barber school or college, the fee for reinstatement of a delinquent license, and the fee for the transfer of license or change of ownership of a barber school or college shall be set by the board. No fee shall be collected if the change in ownership is caused by a present license owner incorporating.

**Source:** Laws 1971, LB 1020, § 22; Laws 1975, LB 66, § 6; Laws 1997, LB 622, § 91; Laws 2009, LB195, § 58.

**71-219.02 Application for license to establish a barber shop; form; contents; transfer; fees; inspection.**

Application for a license to establish a barber shop shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, sanitation, and other data concerning such business as may be required by the board. The board shall collect with such application, in addition to the license fee, a fee to be set by the board. A fee shall be collected for the transfer of license or change of ownership of a barber shop, but no fee shall be collected if the ownership results merely from a present license holder incorporating his or her business. Every barber shop shall be called upon by the state barber inspector at least once each licensing period for the purpose of inspection in order to be eligible for a permit to conduct a barber shop, and no license shall be issued unless all deficiencies found by inspection of such shop have been corrected.

**Source:** Laws 1975, LB 66, § 5; Laws 1978, LB 722, § 15; Laws 1997, LB 622, § 92; Laws 2009, LB195, § 59.

**71-219.03 Board of Barber Examiners; set fees; manner; annual report.**

The Board of Barber Examiners shall set the fees at a level sufficient to provide for all actual and necessary expenses and salaries of the board and in such a manner that unnecessary surpluses are avoided. The board shall annually file a report with the Attorney General and the Legislative Fiscal Analyst stating the amount of the fees set by the board. Such report shall be submitted on or before July 1 of each year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

**Source:** Laws 1975, LB 66, § 7; Laws 2012, LB782, § 102.

**71-219.04 Barber shop or school; reinspection; fees.**

When it is necessary for an inspector to reinspect a barber shop or barber school to determine if a violation has been corrected, there shall be a fee assessed to the barber, barber shop owner, instructor, or barber school owner for the first, second, and third callback inspection. The fees shall be an amount set by the board.

**Source:** Laws 1983, LB 87, § 13; Laws 1997, LB 622, § 93.

**71-219.05 Barber shop; booth rental permit; application; form; contents; issuance; notice of change of work address.**

(1) Any barber who leases space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person shall obtain a booth rental permit.

(2) An application for a booth rental permit shall be made on a form furnished by the board and shall include the applicant's name, barber license number, telephone number, and work address, whether the applicant is an independent contractor or a self-employed person, and such other information as the board deems necessary. The applicant's mailing address shall be the work address shown on the permit application.

(3) The board shall issue a booth rental permit upon receipt of an application containing the information required under subsection (2) of this section and the fee established pursuant to section 71-219.

(4) The holder of a booth rental permit shall provide the board with ten days' written notice before changing his or her work address.

**Source:** Laws 2009, LB195, § 60.

**71-220 Violation; penalty.**

Any person, firm, or corporation, their agents or servants, who shall violate any of the provisions of sections 71-201 to 71-237 shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1927, c. 163, § 17, p. 434; Laws 1929, c. 154, § 9, p. 538; C.S.1929, § 71-2021; R.S.1943, § 71-220; Laws 1957, c. 294, § 8, p. 1057; Laws 1971, LB 1020, § 23; Laws 1977, LB 39, § 147.

Under former law section prescribed no penalty for cutting hair without a haircutters' certificate of registration as required by former section 71-203. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

**71-220.01 Violation; nuisance; abatement or other relief.**

A violation of the Barber Act by any person shall constitute a nuisance and the board, acting in the name of the state, shall be authorized to file suit in the district court of the district in which the alleged violation occurred for the purpose of seeking an abatement of such nuisance and for such other relief as the court may deem appropriate to grant. The procedure in the district court shall be the same as the procedure for matters in equity in the district court of Nebraska.

**Source:** Laws 1971, LB 1020, § 24; Laws 1997, LB 622, § 94.

**71-221 Board of Barber Examiners; established; members; qualifications; terms; appointment; removal.**

A board, to be known as the Board of Barber Examiners, is hereby established, to consist of three members appointed by the Governor. Each member shall be a practicing barber who has followed the occupation of barbering in this state for at least five years prior to his appointment, and who is actually engaged in the practice of barbering during the term of his appointment. The members of the first board appointed shall serve for three years, two years, and one year, respectively, as appointed, and members appointed thereafter shall serve for three years. The Governor may remove a member for cause. Members appointed to fill vacancies caused by death, resignation or removal, shall serve during the unexpired term of their predecessors.

**Source:** Laws 1927, c. 163, § 18, p. 434; C.S.1929, § 71-2022; R.S.1943, § 71-221; Laws 1963, c. 409, § 24, p. 1325; Laws 1971, LB 1020, § 25.

**71-222 Board; officers; compensation; records; reports; employees.**

The board shall annually elect a president and vice president, and the board shall appoint a director who shall serve as secretary of the board. The board shall be furnished with suitable quarters in the State Capitol or elsewhere. It shall adopt and use a common seal for the authentication of its orders and records. The secretary of the board shall keep a record of all proceedings of the board. A majority of the board, in a meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board. Each member of the board shall receive a compensation of seventy-five dollars per diem and



shall be reimbursed for his or her actual and necessary expenses incurred in the discharge of his or her duties as provided in sections 81-1174 to 81-1177, not to exceed two thousand dollars per annum. Salaries and expenses shall be paid only from the fund created by fees collected in the administration of the Barber Act, and no other funds or state money except as collected in the administration of the act shall be drawn upon to pay the expense of administration. The board shall report each year to the Governor a full statement of its receipts and expenditures and also a full statement of its work during the year, together with such recommendations as it may deem expedient. The board may employ one field inspector and such other inspectors, clerks, and other assistants as it may deem necessary to carry out the act and prescribe their qualifications. No owner, agent, or employee of any barber school shall be eligible to membership on the board.

**Source:** Laws 1927, c. 163, § 19, p. 435; C.S.1929, § 71-2023; Laws 1933, c. 121, § 2, p. 491; C.S.Supp.,1941, § 71-2023; R.S.1943, § 71-222; Laws 1957, c. 294, § 9, p. 1057; Laws 1963, c. 409, § 25, p. 1326; Laws 1971, LB 1020, § 26; Laws 1972, LB 1183, § 5; Laws 1978, LB 722, § 16; Laws 1981, LB 204, § 113; Laws 1993, LB 226, § 8.

**71-222.01 Director; serve at pleasure of board; salary; qualifications; bond or insurance; premium.**

The director, under the supervision of the Board of Barber Examiners, shall administer the provisions of sections 71-201 to 71-237, and shall serve at the pleasure of the board. His or her salary shall be fixed by the board. The director shall devote full time to the duties of his office. No person shall be eligible to the office of director who has not been engaged in the active practice of barbering as a registered barber in the state for at least five years immediately preceding his appointment. No member of the Board of Barber Examiners shall be eligible to the office of director during his or her term. The director shall be bonded or insured as required by section 11-201. The premium shall be paid as an expense of the board.

**Source:** Laws 1963, c. 409, § 26, p. 1326; Laws 1965, c. 417, § 7, p. 1333; Laws 1971, LB 1020, § 27; Laws 1978, LB 722, § 18; Laws 1978, LB 653, § 25; Laws 2004, LB 884, § 34.

**71-222.02 Board of Barber Examiners Fund; created; use; investment.**

All funds collected in the administration of the Barber Act shall be remitted to the State Treasurer for credit to the Board of Barber Examiners Fund which is hereby created and which shall be expended only for the administration of the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Board of Barber Examiners Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1963, c. 409, § 27, p. 1327; Laws 1969, c. 584, § 68, p. 2387; Laws 1995, LB 7, § 73; Laws 2009, First Spec. Sess., LB3, § 44.

## Cross References

Fees, see sections 33-151 and 33-152.

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-223 Board; rules and regulations; inspections; record of proceedings.**

The board shall have authority to adopt and promulgate reasonable rules and regulations for the administration of the provisions of sections 71-201 to 71-224. Any member of the board, its agents, or its assistants shall have authority to enter upon and to inspect any barber shop or barber school at any time during business hours. A copy of the rules and regulations adopted by the board shall be furnished to the owner or manager of each barber shop and barber school, and it shall be posted in a conspicuous place in such barber shop or barber school. The board shall keep a record of proceedings relating to the issuance, refusal, renewal, suspension, and revocation of registrations and licenses and inspections. Such record shall also contain the name, place of business, and residence of each registered barber instructor and licensed barber and the date and number of his or her registration or license.

**Source:** Laws 1927, c. 163, § 20, p. 435; C.S.1929, § 71-2024; R.S.1943, § 71-223; Laws 1963, c. 409, § 28, p. 1327; Laws 1993, LB 226, § 9.

**71-223.01 Barber shops and barber schools; sanitary requirements; inspections.**

The board shall by rules and regulations duly adopted prescribe sanitary requirements for barber shops and barber schools. The board or its employees shall regularly inspect all barber shops and barber schools in this state to insure compliance with such regulations. Such sanitary requirements and inspections shall include all activities, in addition to barbering as defined in section 71-202, taking place on the licensed premises. A written report of each such inspection made shall be submitted to the board. Each school or barber shop shall be called upon at least once each licensing period for the purpose of inspection prior to the issuance of its license to be eligible for renewal of certification or registration.

**Source:** Laws 1963, c. 409, § 29, p. 1328; Laws 1971, LB 1020, § 28; Laws 1978, LB 722, § 18; Laws 1996, LB 1044, § 483; Laws 1997, LB 622, § 95; Laws 1999, LB 121, § 2; Laws 2009, LB195, § 61.

**71-223.02 Barber schools; sign required; advertising requirements.**

A barber school shall display a sign indicating that it is a barber school. The sign shall be clearly visible at the main entrance. A sign shall be displayed in the clinical area indicating that all services are performed by students. A barber school which advertises the performance of any barber service shall advertise, in as conspicuous a manner as such advertisement of services, that all services are performed by students.

**Source:** Laws 1963, c. 409, § 30, p. 1328; Laws 1993, LB 226, § 10.

**71-223.03 Repealed. Laws 1982, LB 592, § 2.****71-223.04 Class of instruction; temporary permit; issuance; requirements; fee; period valid; bond.**

Any person who desires to conduct any class or classes of instruction, other than a free demonstration, shall, before engaging in such instruction, make application to the Board of Barber Examiners for a temporary permit authorizing the applicant to conduct such class or classes. In order to be qualified for such temporary license, the applicant must (1) hold a valid license as a registered barber in some state in the United States; (2) have filed with the Board of Barber Examiners an application setting forth the type of classes to be conducted, the period of time the classes will be conducted, the place in which such classes are to be conducted, and the amount of tuition, if any, to be charged; and (3) pay the fee set by the board for issuance of a temporary permit. Upon being satisfied that the applicant does hold a valid license as a barber in some state in the United States, is qualified to conduct such classes, and has made arrangements to conduct such classes in facilities which otherwise meet the requirements as to health and sanitation required of a barber school in the State of Nebraska, the board shall issue a temporary license to such applicant to permit the conducting of such classes. The license shall be valid only for the classes and times set forth in the application. Before such application is delivered to an applicant other than a barber or barber school or college currently licensed in Nebraska, the applicant must post with the Board of Barber Examiners a good and sufficient surety bond, issued by a reputable bonding company licensed to do business in the State of Nebraska, for the benefit of the persons taking such class or classes in a sufficient amount to assure to such students a refund of any portion of their tuition paid but not used, in the event that such class or classes shall discontinue operation for any reason prior to the time that all of such classes have been conducted.

**Source:** Laws 1971, LB 1020, § 29; Laws 1978, LB 722, § 19.

**71-224 Act, how cited.**

Sections 71-201 to 71-255 shall be known and may be cited as the Barber Act.

**Source:** Laws 1927, c. 163, § 23, p. 436; C.S.1929, § 71-2027; R.S.1943, § 71-224; Laws 1971, LB 1020, § 31; Laws 1993, LB 226, § 11; Laws 2009, LB195, § 62; Laws 2018, LB731, § 91.

Operative date January 1, 2019.

**71-225 Legislative declarations.**

The Legislature declares that: (1) The provisions and regulations of the Barber Act are enacted in the interest of public health, public safety, and the general welfare; and (2) the skilled trade of barbering and the operation of barber shops is affected with a public interest.

**Source:** Laws 1945, c. 174, § 1, p. 554; Laws 1957, c. 294, § 10, p. 1058; Laws 1978, LB 722, § 20; Laws 1997, LB 622, § 96.

**71-226 Repealed. Laws 1978, LB 722, § 24.****71-227 Board; investigate conditions and practices; notice and hearing; order.**

Whenever it appears to the board that practices prevail among barbers which tend to impair the health or efficiency of barbers or to endanger the health or safety of their patrons, the board shall investigate and determine whether such conditions or practices prevail. If such conditions or practices exist or are at risk of occurring, the board may, by official order and after due notice and hearing, adopt and promulgate rules and regulations to promote the purposes of the Barber Act.

**Source:** Laws 1945, c. 174, § 3, p. 555; Laws 1978, LB 722, § 21; Laws 1997, LB 622, § 97.

**71-228 Board; practice and procedure in accordance with rules and regulations.**

The practice and procedure of the board, with respect to any investigation authorized by sections 71-225 to 71-237, shall be in accordance with rules and regulations to be promulgated by the board, which shall provide for reasonable notice to all persons affected by the orders to be made by the board and an opportunity for any such persons to be heard, either in person or by counsel, and introduce testimony in their behalf at any hearing to be held for that purpose.

**Source:** Laws 1945, c. 174, § 4(1), p. 555.

**71-229 Repealed. Laws 1978, LB 722, § 24.**

**71-230 Board; oaths; witnesses; fees; compel testimony to be given; subpoena; serving of papers by sheriff.**

For the purpose of any investigation or hearing which the board is authorized to conduct, the board, or any member thereof, shall have power to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. In case of the disobedience of any person in complying with any order of the board, or a subpoena issued by the board or any of its members, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of any district court of the county in which the person resides, on application by any member of the board, shall compel obedience by attachment proceedings as for contempt, as in the case of the disobedience of a subpoena issued from such court or a refusal to testify therein. The sheriff of the county in which such person resides shall serve all orders and subpoenas herein referred to. Each witness who shall appear in obedience to a subpoena before the board or a member thereof, shall receive for his or her attendance the fees provided for witnesses in civil cases in the district court of this state and mileage at the rate provided in section 81-1176 for state employees, which shall be paid upon the presentation of proper vouchers, approved by any two members of the board. No witnesses subpoenaed at the instance of a party other than the board or one of its members, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated.

**Source:** Laws 1945, c. 174, § 4(3), p. 556; Laws 1981, LB 204, § 114.

**71-231 Board; investigations; matters to be considered.**

In making any investigation as to conditions existing in the barber trade, the board shall give due consideration to (1) the costs incurred in the particular county under investigation with regard to the adequacy of the income of barber shop operators to assure full compliance with all sanitary regulations imposed by any law of this state and (2) healthful working conditions in barber shops.

**Source:** Laws 1945, c. 174, § 4(4), p. 556; Laws 1957, c. 294, § 12, p. 1059.

**71-232 Board; adopt rules and regulations.**

The board shall adopt and promulgate and enforce all rules, regulations, and orders necessary to carry out the Barber Act.

**Source:** Laws 1945, c. 174, § 5, p. 557; Laws 1978, LB 722, § 22; Laws 1997, LB 622, § 98.

**71-233 Repealed. Laws 1978, LB 722, § 24.**

**71-234 Certificate of registration; board; suspend or revoke; notice; hearing.**

The Board of Barber Examiners may suspend or revoke the certificate of registration of any barber who has violated any order of the board promulgated hereunder; *Provided*, no certificate of registration shall be suspended or revoked by the board until (1) the person accused has been given at least twenty days' notice in writing of the charge against him and (2) a public hearing is had by the board.

**Source:** Laws 1945, c. 174, § 7, p. 557.

**71-235 Appeal; procedure.**

Any licensee, considering himself or herself aggrieved by any action of the board taken pursuant to the Barber Act may appeal the action of the board, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1945, c. 174, § 8, p. 557; Laws 1963, c. 409, § 32, p. 1328; Laws 1988, LB 352, § 120.

**Cross References**

Administrative Procedure Act, see section 84-920.

**71-236 Repealed. Laws 1953, c. 238, § 7.**

**71-237 Expenses of administration; how paid.**

All expenses incidental to the administration of sections 71-225 to 71-237 shall be paid from the funds of the Board of Barber Examiners in the manner and form governing other expenditures of that board.

**Source:** Laws 1945, c. 174, § 11, p. 558.

**71-238 Reciprocal licensure agreements; board; powers.**

The board may negotiate reciprocal agreements for licensure with any other state or country for licensed barbers and registered barber instructors.

**Source:** Laws 1983, LB 87, § 1; Laws 1993, LB 226, § 12.

**71-239 Foreign licenses; recognition; board; powers.**

For purposes of recognizing licenses which have been issued in other states or countries to practice barbering as a licensed barber or registered barber instructor, the board may:

- (1) Enter into a reciprocal agreement with any state which is certified to it by the proper examining board under the provisions of section 71-240; and
- (2) Provide for licensure without examination as provided in section 71-239.01.

**Source:** Laws 1983, LB 87, § 2; Laws 1993, LB 226, § 13; Laws 2009, LB195, § 63.

**71-239.01 Foreign licenses; recognition; licensure without examination; application; form; contents; issuance; appeal.**

(1) The board may issue a license without examination to a person licensed in a state, territory, or country with which the board has not entered into a reciprocal agreement under section 71-239 as provided in this section.

(2) An applicant for licensure without examination under subsection (1) of this section shall file with the board (a) an application on a form provided by the board, (b) a copy of the license issued by the state, territory, or country in which the applicant is licensed, (c) the applicant's social security number, (d) documents demonstrating that the requirements for licensure in such state, territory, or country are substantially equivalent to the requirements for licensure under the Barber Act, and (e) the fee required pursuant to section 71-219.

(3) The board shall review each application and the documents submitted under this section and determine within sixty days after receiving such application and documentation whether to issue a license without examination to the applicant. The board shall notify the applicant of its decision within ten days after the date of making the decision. If the board determines not to issue a license without examination to the applicant, he or she may appeal the decision of the board and the appeal shall be in accordance with the Administrative Procedure Act.

(4) The board may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2009, LB195, § 64.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-240 Board; review foreign licensing requirements.**

The Board of Barber Examiners shall at least once each year review the licensing requirements of other states or countries which issue licenses to practice barbering in the various classifications in which the board conducts examinations for licenses in this state. The board shall examine such requirements and, after making such other inquiries as it deems necessary, shall certify the states and countries having substantially equivalent requirements to those existing in this state for the practice of barbering and with which such board desires to enter into a reciprocal licensure agreement.

**Source:** Laws 1983, LB 87, § 3.

**71-241 Board; reciprocal agreement; conditions.**

In negotiating any reciprocal agreement, the Board of Barber Examiners shall be governed by the following:

(1) When the laws of any state or country or the rules of the authorities of such state or country place any requirement or disability upon any person licensed in this state to practice barbering which affects the right of such person to be licensed or to practice his or her profession in such other state, then the same requirement or disability shall be placed upon any person licensed in such state or country when applying for a license to practice in this state; and

(2) When any examining board has established by rule any special conditions upon which reciprocal agreements shall be entered into, as provided in section 71-242, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice barbering in any classification in which such examining board conducts examinations.

**Source:** Laws 1983, LB 87, § 4.

**71-242 Reciprocal agreement; applicant for licensure or registration; requirements; failure to qualify; effect.**

The board shall not enter into any reciprocal agreement with any state or country with reference to the practice of barbering as a licensed barber or registered barber instructor for which the board conducts examinations unless every person licensed or registered in such state or country when applying for a license to practice in this state shall show:

(1) That the requirements for licensure or registration were substantially equal to those in force in this state at the time such license was issued; or

(2) Upon due proof that such applicant has continuously practiced the practices or occupation for which application for a license is made at least three years immediately prior to such application.

The applicant shall also pay the fee set pursuant to section 71-219 and provide his or her social security number.

Except as provided in section 71-239.01, any applicant who fails to qualify for such exemption because his or her study or training outside this state does not fulfill the requirements of this section shall receive credit for the number of hours of study and training successfully completed in the particular state where he or she is registered or licensed, and he or she shall be qualified for the examination upon completion of such supplementary study and training in an accredited school of barbering in this state as the board finds necessary to substantially equal the study and training of a qualified person who has studied and trained in an accredited school in this state only. For the purposes of this section, each six months of practice outside of this state of the practices or occupation for which application for a license is made shall be deemed the equivalent of one hundred hours of study and training required in this state in order to qualify for the practice of barbering.

**Source:** Laws 1983, LB 87, § 5; Laws 1993, LB 226, § 14; Laws 1997, LB 752, § 167; Laws 2009, LB195, § 65.

**71-243 Reciprocal agreement; terminated; when.**

When the requirements for a license in any state or country with which this state has a reciprocal agreement as authorized by section 71-239 are changed

by any law or rule of the authorities of such state so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state or country shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated.

**Source:** Laws 1983, LB 87, § 6.

**71-244 License granted under reciprocal agreement; when.**

The Board of Barber Examiners shall, upon presentation of a certification of licensure to practice barbering as a registered barber or instructor by the duly constituted authority of another state or country, with which this state has established reciprocal relations as authorized by section 71-239, and subject to the rules of the board, license such applicant to practice in this state unless an examination is required under section 71-242.

**Source:** Laws 1983, LB 87, § 7.

**71-245 Reciprocal license; provisions applicable.**

The provisions of the Barber Act, relating to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, apply as far as applicable to applicants for a reciprocal license or for a license issued without examination pursuant to section 71-239.01.

**Source:** Laws 1983, LB 87, § 8; Laws 1997, LB 622, § 99; Laws 2009, LB195, § 66.

**71-246 Reciprocal requirements and disabilities; applicable; when.**

When the laws or the rules of the authorities of a state or country place any requirement or disability upon any person holding a diploma or certificate from any school or college of barbering in this state in which barbering is taught, which affects the right of such person to be licensed in such state, the same requirement or disability shall be placed upon any person holding a diploma or certificate from a similar school or college situated in that state when applying for a license to practice in this state.

**Source:** Laws 1983, LB 87, § 9.

**71-247 Reciprocity; board; establish rules.**

The Board of Barber Examiners shall have the power to establish the necessary rules for carrying out the reciprocal relations with other states or countries which are authorized by sections 71-238 to 71-246.

**Source:** Laws 1983, LB 87, § 10.

**71-248 Licensee; change of residence; certified statement.**

Any licensee who desires to change his or her residence to that of another state or country shall, upon application to the Board of Barber Examiners and payment of the legal fee, receive a certified statement that he or she is a duly licensed practitioner in this state.

**Source:** Laws 1983, LB 87, § 11.



**71-249 Mobile barber shop; license; requirements.**

In order to be licensed as a mobile barber shop by the board, an applicant shall, in addition to the requirements of the Barber Act, meet, and present to the board evidence of meeting, the following requirements:

(1) The proposed barber shop is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the board to track the location of the barber shop over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the barber shop is in operation or open for business; and

(iii) The owner of the barber shop provides the board with all information necessary to track the barber shop over the Internet; or

(b) The owner of the barber shop submits to the board, in a manner specified by the board, a weekly itinerary showing the dates, exact locations, and times that barbering services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the board any changes in the itinerary not less than twenty-four hours prior to the change. A barber shop shall follow the itinerary in providing service and notify the board of any changes;

(3) The barber shop is clearly identified as such to the public by a sign;

(4) The barber shop complies with the sanitary requirements of the Barber Act and the rules and regulations adopted and promulgated under the act;

(5) The entrance into the proposed barber shop used by the general public provides safe access by the public; and

(6) The proposed barber shop includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

**Source:** Laws 2018, LB731, § 84.

Operative date January 1, 2019.

**71-250 Mobile barber shop license; application.**

Any person seeking a license to operate a mobile barber shop shall submit a completed application to the board as provided in section 71-219.02, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed barber shop sufficient to demonstrate compliance with the requirements of section 71-249.

**Source:** Laws 2018, LB731, § 85.

Operative date January 1, 2019.

**71-251 Mobile barber shop; application; review; denial; inspection.**

In addition to the requirements of the Barber Act, each application for a license to operate a mobile barber shop shall be reviewed by the board for compliance with the requirements of the Barber Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the board shall issue the applicant a certificate of consideration to operate a mobile barber shop pending an operation inspection.

The board shall conduct an operation inspection of each barber shop issued a certificate of consideration within six months after the issuance of such certificate. A barber shop which passes the inspection shall be issued a license. A barber shop which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the barber shop does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

**Source:** Laws 2018, LB731, § 86.  
Operative date January 1, 2019.

#### **71-252 Mobile barber shop; operating requirements.**

In order to maintain its license in good standing, each mobile barber shop shall operate in accordance with the following requirements:

(1) The barber shop shall at all times comply with all applicable provisions of the Barber Act and all rules and regulations adopted and promulgated under the act;

(2) The barber shop owner or his or her agent shall notify the board of any change of ownership, name, or office address and if a barber shop is permanently closed;

(3) No barber shop shall permit any unlicensed person to perform any of the practices of barbering within its confines or employment;

(4) The barber shop shall display a name upon, over, or near the entrance door distinguishing it as a barber shop;

(5) The barber shop shall permit any duly authorized agent of the board to conduct an operation inspection or investigation at any time during the normal operating hours of the barber shop, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the barber shop, all personnel, and all records requested by the inspector;

(6) The barber shop shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a barber shop; and

(b) The current licenses of all persons licensed under the act who are employed by or working in the barber shop;

(7) No barbering practices may be performed in a barber shop while the barber shop is moving. The barber shop must be safely and legally parked in a legal parking space at all times while clients are present inside the barber shop. A barber shop shall not park or conduct business within three hundred feet of another licensed barber shop. The board is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation; and

(8) The owner of the barber shop shall maintain a permanent business address at which correspondence from the board may be received and records of appointments, license numbers, and vehicle identification numbers shall be

kept for each barber shop being operated by the owner. The owner shall make such records available for verification and inspection by the board.

**Source:** Laws 2018, LB731, § 87.  
Operative date January 1, 2019.

**71-253 Mobile barber shop license; revocation or expiration; effect.**

The license of a mobile barber shop that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such barber shop may reopen for business.

**Source:** Laws 2018, LB731, § 88.  
Operative date January 1, 2019.

**71-254 Mobile barber shop license; change of ownership or mobile unit; effect.**

Each mobile barber shop license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such barber shop may reopen for business.

**Source:** Laws 2018, LB731, § 89.  
Operative date January 1, 2019.

**71-255 Mobile barber shop; owner liability.**

The owner of each mobile barber shop shall have full responsibility for ensuring that the barber shop is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the barber shop.

**Source:** Laws 2018, LB731, § 90.  
Operative date January 1, 2019.

**ARTICLE 3**

**NEBRASKA COSMETOLOGY ACT**

**Cross References**

- Barber Act**, see section 71-224.
- Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act**, see section 38-1001.
- Indoor Tanning Facility Act**, see section 71-3901.
- Uniform Credentialing Act**, see section 38-101.

Section	
71-301.	Repealed. Laws 1961, c. 340, § 29.
71-302.	Repealed. Laws 1961, c. 340, § 29.
71-303.	Repealed. Laws 1961, c. 340, § 29.
71-304.	Repealed. Laws 1961, c. 340, § 29.
71-305.	Repealed. Laws 1961, c. 340, § 29.
71-306.	Repealed. Laws 1961, c. 340, § 29.
71-307.	Repealed. Laws 1961, c. 340, § 29.
71-308.	Repealed. Laws 1961, c. 340, § 29.
71-309.	Repealed. Laws 1961, c. 340, § 29.
71-310.	Repealed. Laws 1961, c. 340, § 29.
71-311.	Repealed. Laws 1961, c. 340, § 29.
71-312.	Repealed. Laws 1961, c. 340, § 29.
71-312.01.	Repealed. Laws 1986, LB 318, § 145.
71-313.	Repealed. Laws 1986, LB 318, § 145.

## PUBLIC HEALTH AND WELFARE

Section	
71-313.01.	Repealed. Laws 1986, LB 318, § 145.
71-314.	Repealed. Laws 1986, LB 318, § 145.
71-315.	Repealed. Laws 1986, LB 318, § 145.
71-316.	Repealed. Laws 1986, LB 318, § 145.
71-317.	Repealed. Laws 1986, LB 318, § 145.
71-318.	Repealed. Laws 1986, LB 318, § 145.
71-318.01.	Repealed. Laws 1986, LB 318, § 145.
71-319.	Repealed. Laws 1986, LB 318, § 145.
71-320.	Repealed. Laws 1986, LB 318, § 145.
71-320.01.	Repealed. Laws 1986, LB 318, § 145.
71-321.	Repealed. Laws 1986, LB 318, § 145.
71-322.	Repealed. Laws 1986, LB 318, § 145.
71-322.01.	Repealed. Laws 1978, LB 569, § 14.
71-322.02.	Repealed. Laws 1986, LB 318, § 145.
71-322.03.	Repealed. Laws 1986, LB 318, § 145.
71-322.04.	Repealed. Laws 1986, LB 318, § 145.
71-322.05.	Repealed. Laws 1986, LB 318, § 145.
71-323.	Repealed. Laws 1986, LB 318, § 145.
71-324.	Repealed. Laws 1986, LB 318, § 145.
71-325.	Repealed. Laws 1986, LB 318, § 145.
71-326.	Repealed. Laws 1986, LB 318, § 145.
71-327.	Repealed. Laws 1986, LB 318, § 145.
71-328.	Repealed. Laws 1986, LB 318, § 145.
71-329.	Repealed. Laws 1986, LB 318, § 145.
71-330.	Repealed. Laws 1986, LB 318, § 145.
71-331.	Repealed. Laws 1986, LB 318, § 145.
71-332.	Repealed. Laws 1986, LB 318, § 145.
71-333.	Repealed. Laws 1986, LB 318, § 145.
71-334.	Repealed. Laws 1986, LB 318, § 145.
71-335.	Repealed. Laws 1986, LB 318, § 145.
71-336.	Repealed. Laws 1986, LB 318, § 145.
71-337.	Repealed. Laws 1986, LB 318, § 145.
71-338.	Repealed. Laws 1986, LB 318, § 145.
71-339.	Repealed. Laws 1986, LB 318, § 145.
71-340.	Transferred to section 38-1001.
71-341.	Transferred to section 38-1002.
71-342.	Transferred to section 38-1003.
71-343.	Transferred to section 38-1004.
71-344.	Transferred to section 38-1005.
71-345.	Transferred to section 38-1006.
71-346.	Transferred to section 38-1007.
71-346.01.	Transferred to section 38-1008.
71-346.02.	Transferred to section 38-1009.
71-346.03.	Transferred to section 38-1010.
71-346.04.	Transferred to section 38-1011.
71-347.	Transferred to section 38-1012.
71-348.	Transferred to section 38-1013.
71-349.	Transferred to section 38-1014.
71-350.	Transferred to section 38-1015.
71-351.	Transferred to section 38-1016.
71-352.	Transferred to section 38-1017.
71-353.	Transferred to section 38-1018.
71-354.	Repealed. Laws 2007, LB 463, § 1319.
71-355.	Repealed. Laws 2007, LB 296, § 815.
71-356.	Transferred to section 38-1019.
71-356.01.	Transferred to section 38-1020.
71-356.02.	Transferred to section 38-1021.
71-356.03.	Transferred to section 38-1022.
71-356.04.	Transferred to section 38-1023.
71-356.05.	Transferred to section 38-1024.
71-357.	Transferred to section 38-1025.

## NEBRASKA COSMETOLOGY ACT

Section	
71-357.01.	Transferred to section 38-1026.
71-357.02.	Transferred to section 38-1027.
71-357.03.	Transferred to section 38-1028.
71-358.	Transferred to section 38-1029.
71-358.01.	Transferred to section 38-1030.
71-359.	Transferred to section 38-1031.
71-360.	Transferred to section 38-1032.
71-360.01.	Transferred to section 38-1033.
71-361.	Repealed. Laws 1999, LB 68, § 91.
71-361.01.	Transferred to section 38-1034.
71-361.02.	Transferred to section 38-1035.
71-361.03.	Transferred to section 38-1036.
71-361.04.	Transferred to section 38-1037.
71-361.05.	Transferred to section 38-1038.
71-361.06.	Transferred to section 38-1039.
71-361.07.	Transferred to section 38-1040.
71-361.08.	Transferred to section 38-1041.
71-361.09.	Transferred to section 38-1042.
71-362.	Transferred to section 38-1043.
71-362.01.	Transferred to section 38-1044.
71-363.	Repealed. Laws 2007, LB 463, § 1319.
71-363.01.	Transferred to section 38-1045.
71-364.	Transferred to section 38-1046.
71-365.	Transferred to section 38-1047.
71-365.01.	Transferred to section 38-1048.
71-365.02.	Transferred to section 38-1049.
71-366.	Transferred to section 71-357.01.
71-367.	Transferred to section 71-357.03.
71-368.	Transferred to section 38-1050.
71-369.	Transferred to section 38-1051.
71-370.	Transferred to section 38-1052.
71-370.01.	Transferred to section 38-1053.
71-370.02.	Transferred to section 38-1054.
71-371.	Transferred to section 38-1055.
71-372.	Transferred to section 38-1056.
71-373.	Repealed. Laws 2007, LB 463, § 1319.
71-374.	Transferred to section 38-1057.
71-375.	Repealed. Laws 2007, LB 463, § 1319.
71-376.	Repealed. Laws 2007, LB 463, § 1319.
71-377.	Repealed. Laws 2007, LB 463, § 1319.
71-378.	Repealed. Laws 2007, LB 463, § 1319.
71-379.	Repealed. Laws 2007, LB 463, § 1319.
71-380.	Repealed. Laws 2007, LB 463, § 1319.
71-381.	Repealed. Laws 2003, LB 242, § 154.
71-382.	Repealed. Laws 2003, LB 242, § 154.
71-383.	Repealed. Laws 2003, LB 242, § 154.
71-384.	Repealed. Laws 2003, LB 242, § 154.
71-385.	Transferred to section 38-1058.
71-385.01.	Transferred to section 38-1059.
71-385.02.	Transferred to section 38-1060.
71-386.	Transferred to section 38-1061.
71-387.	Transferred to section 38-1062.
71-388.	Transferred to section 38-1063.
71-389.	Transferred to section 38-1064.
71-390.	Transferred to section 38-1065.
71-391.	Repealed. Laws 2007, LB 463, § 1319.
71-392.	Repealed. Laws 2007, LB 463, § 1319.
71-393.	Repealed. Laws 2007, LB 463, § 1319.
71-394.	Transferred to section 38-1066.
71-394.01.	Repealed. Laws 2007, LB 463, § 1319.
71-395.	Transferred to section 38-1067.

## PUBLIC HEALTH AND WELFARE

Section	
71-396.	Transferred to section 38-1068.
71-397.	Repealed. Laws 2007, LB 463, § 1319.
71-398.	Transferred to section 38-1069.
71-399.	Transferred to section 38-1070.
71-3,100.	Transferred to section 38-1071.
71-3,101.	Transferred to section 38-1072.
71-3,102.	Transferred to section 38-10,103.
71-3,103.	Repealed. Laws 2007, LB 463, § 1319.
71-3,104.	Transferred to section 38-1073.
71-3,105.	Transferred to section 38-1074.
71-3,106.	Transferred to section 38-1075.
71-3,106.01.	Transferred to section 38-1076.
71-3,107.	Repealed. Laws 2007, LB 463, § 1319.
71-3,108.	Repealed. Laws 2007, LB 463, § 1319.
71-3,109.	Repealed. Laws 2002, LB 1021, § 111.
71-3,110.	Repealed. Laws 2002, LB 1021, § 111.
71-3,111.	Repealed. Laws 2002, LB 1021, § 111.
71-3,112.	Repealed. Laws 2007, LB 463, § 1319.
71-3,113.	Repealed. Laws 2002, LB 1021, § 111.
71-3,114.	Repealed. Laws 2002, LB 1021, § 111.
71-3,115.	Repealed. Laws 2007, LB 463, § 1319.
71-3,116.	Repealed. Laws 2002, LB 1021, § 111.
71-3,117.	Transferred to section 38-1077.
71-3,118.	Repealed. Laws 2002, LB 1021, § 111.
71-3,119.	Transferred to section 38-1078.
71-3,119.01.	Transferred to section 38-1079.
71-3,119.02.	Transferred to section 38-1080.
71-3,119.03.	Transferred to section 38-1081.
71-3,120.	Transferred to section 38-1082.
71-3,121.	Transferred to section 38-1083.
71-3,122.	Transferred to section 38-1084.
71-3,123.	Transferred to section 38-1085.
71-3,124.	Transferred to section 38-1086.
71-3,125.	Transferred to section 38-1087.
71-3,126.	Transferred to section 38-1088.
71-3,127.	Transferred to section 38-1089.
71-3,128.	Transferred to section 38-1090.
71-3,129.	Transferred to section 38-1091.
71-3,130.	Transferred to section 38-1092.
71-3,131.	Transferred to section 38-1093.
71-3,132.	Repealed. Laws 2007, LB 463, § 1319.
71-3,133.	Transferred to section 38-1094.
71-3,134.	Transferred to section 38-1095.
71-3,135.	Transferred to section 38-1096.
71-3,136.	Transferred to section 38-1097.
71-3,137.	Transferred to section 38-1098.
71-3,138.	Transferred to section 38-1099.
71-3,138.01.	Repealed. Laws 2004, LB 1005, § 143.
71-3,138.02.	Transferred to section 38-10,100.
71-3,139.	Transferred to section 38-10,101.
71-3,140.	Transferred to section 38-10,102.
71-3,141.	Transferred to section 38-10,104.
71-3,142.	Transferred to section 38-10,105.
71-3,143.	Transferred to section 38-10,106.
71-3,144.	Transferred to section 38-10,107.
71-3,145.	Repealed. Laws 2007, LB 463, § 1319.
71-3,146.	Transferred to section 38-10,108.
71-3,147.	Transferred to section 38-10,109.
71-3,148.	Transferred to section 38-10,110.
71-3,149.	Transferred to section 38-10,111.
71-3,150.	Transferred to section 38-10,112.

## NEBRASKA COSMETOLOGY ACT

Section	
71-3,151.	Transferred to section 38-10,113.
71-3,152.	Transferred to section 38-10,114.
71-3,153.	Transferred to section 38-10,115.
71-3,154.	Transferred to section 38-10,116.
71-3,155.	Repealed. Laws 2007, LB 463, § 1319.
71-3,156.	Transferred to section 38-10,117.
71-3,157.	Transferred to section 38-10,118.
71-3,158.	Transferred to section 38-10,119.
71-3,159.	Transferred to section 38-10,120.
71-3,160.	Transferred to section 38-10,121.
71-3,161.	Transferred to section 38-10,122.
71-3,162.	Transferred to section 38-10,123.
71-3,163.	Transferred to section 38-10,124.
71-3,164.	Transferred to section 38-10,125.
71-3,165.	Repealed. Laws 2007, LB 463, § 1319.
71-3,166.	Repealed. Laws 2007, LB 463, § 1319.
71-3,167.	Repealed. Laws 2007, LB 463, § 1319.
71-3,168.	Repealed. Laws 2007, LB 463, § 1319.
71-3,169.	Transferred to section 38-10,169.
71-3,170.	Transferred to section 38-10,170.
71-3,171.	Repealed. Laws 2007, LB 463, § 1319.
71-3,172.	Repealed. Laws 2007, LB 463, § 1319.
71-3,173.	Repealed. Laws 2007, LB 463, § 1319.
71-3,174.	Repealed. Laws 2007, LB 463, § 1319.
71-3,175.	Repealed. Laws 2007, LB 463, § 1319.
71-3,176.	Repealed. Laws 2007, LB 463, § 1319.
71-3,177.	Transferred to section 38-10,171.
71-3,178.	Repealed. Laws 2007, LB 463, § 1319.
71-3,179.	Repealed. Laws 2007, LB 463, § 1319.
71-3,180.	Transferred to section 38-10,126.
71-3,181.	Transferred to section 38-10,127.
71-3,182.	Repealed. Laws 2007, LB 463, § 1319.
71-3,183.	Transferred to section 38-10,128.
71-3,184.	Transferred to section 38-10,129.
71-3,185.	Repealed. Laws 2007, LB 463, § 1319.
71-3,186.	Transferred to section 38-10,130.
71-3,187.	Transferred to section 38-10,131.
71-3,188.	Repealed. Laws 2007, LB 463, § 1319.
71-3,189.	Repealed. Laws 2007, LB 463, § 1319.
71-3,190.	Repealed. Laws 2007, LB 463, § 1319.
71-3,191.	Transferred to section 38-10,132.
71-3,192.	Transferred to section 38-10,133.
71-3,193.	Transferred to section 38-10,134.
71-3,194.	Transferred to section 38-10,135.
71-3,195.	Transferred to section 38-10,136.
71-3,196.	Repealed. Laws 2007, LB 463, § 1319.
71-3,197.	Repealed. Laws 2007, LB 463, § 1319.
71-3,198.	Repealed. Laws 2007, LB 463, § 1319.
71-3,199.	Repealed. Laws 2002, LB 1021, § 111.
71-3,200.	Repealed. Laws 2002, LB 1021, § 111.
71-3,201.	Repealed. Laws 2002, LB 1021, § 111.
71-3,202.	Repealed. Laws 2007, LB 463, § 1319.
71-3,203.	Repealed. Laws 2002, LB 1021, § 111.
71-3,204.	Repealed. Laws 2002, LB 1021, § 111.
71-3,205.	Repealed. Laws 2007, LB 463, § 1319.
71-3,206.	Transferred to section 38-10,137.
71-3,207.	Repealed. Laws 2002, LB 1021, § 111.
71-3,208.	Transferred to section 38-10,138.
71-3,209.	Repealed. Laws 2007, LB 463, § 1319.
71-3,210.	Transferred to section 38-10,139.
71-3,211.	Transferred to section 38-10,140.

Section	
71-3,212.	Transferred to section 38-10,141.
71-3,213.	Transferred to section 38-10,142.
71-3,214.	Transferred to section 38-10,143.
71-3,215.	Transferred to section 38-10,144.
71-3,216.	Transferred to section 38-10,145.
71-3,217.	Transferred to section 38-10,146.
71-3,218.	Transferred to section 38-10,147.
71-3,219.	Transferred to section 38-10,148.
71-3,220.	Transferred to section 38-10,149.
71-3,221.	Transferred to section 38-10,150.
71-3,222.	Transferred to section 38-10,151.
71-3,223.	Transferred to section 38-10,152.
71-3,224.	Transferred to section 38-10,153.
71-3,225.	Transferred to section 38-10,154.
71-3,226.	Transferred to section 38-10,155.
71-3,227.	Transferred to section 38-10,156.
71-3,228.	Transferred to section 38-10,157.
71-3,229.	Transferred to section 38-10,158.
71-3,230.	Transferred to section 38-10,159.
71-3,231.	Transferred to section 38-10,160.
71-3,232.	Transferred to section 38-10,161.
71-3,233.	Transferred to section 38-10,162.
71-3,234.	Transferred to section 38-10,163.
71-3,235.	Transferred to section 38-10,164.
71-3,236.	Transferred to section 38-10,165.
71-3,237.	Transferred to section 38-10,166.
71-3,238.	Transferred to section 38-10,167.

**71-301 Repealed. Laws 1961, c. 340, § 29.**

**71-302 Repealed. Laws 1961, c. 340, § 29.**

**71-303 Repealed. Laws 1961, c. 340, § 29.**

**71-304 Repealed. Laws 1961, c. 340, § 29.**

**71-305 Repealed. Laws 1961, c. 340, § 29.**

**71-306 Repealed. Laws 1961, c. 340, § 29.**

**71-307 Repealed. Laws 1961, c. 340, § 29.**

**71-308 Repealed. Laws 1961, c. 340, § 29.**

**71-309 Repealed. Laws 1961, c. 340, § 29.**

**71-310 Repealed. Laws 1961, c. 340, § 29.**

**71-311 Repealed. Laws 1961, c. 340, § 29.**

**71-312 Repealed. Laws 1961, c. 340, § 29.**

**71-312.01 Repealed. Laws 1986, LB 318, § 145.**

**71-313 Repealed. Laws 1986, LB 318, § 145.**

**71-313.01 Repealed. Laws 1986, LB 318, § 145.**

**71-314 Repealed. Laws 1986, LB 318, § 145.**

**71-315 Repealed. Laws 1986, LB 318, § 145.**



- 71-316 Repealed. Laws 1986, LB 318, § 145.
- 71-317 Repealed. Laws 1986, LB 318, § 145.
- 71-318 Repealed. Laws 1986, LB 318, § 145.
- 71-318.01 Repealed. Laws 1986, LB 318, § 145.
- 71-319 Repealed. Laws 1986, LB 318, § 145.
- 71-320 Repealed. Laws 1986, LB 318, § 145.
- 71-320.01 Repealed. Laws 1986, LB 318, § 145.
- 71-321 Repealed. Laws 1986, LB 318, § 145.
- 71-322 Repealed. Laws 1986, LB 318, § 145.
- 71-322.01 Repealed. Laws 1978, LB 569, § 14.
- 71-322.02 Repealed. Laws 1986, LB 318, § 145.
- 71-322.03 Repealed. Laws 1986, LB 318, § 145.
- 71-322.04 Repealed. Laws 1986, LB 318, § 145.
- 71-322.05 Repealed. Laws 1986, LB 318, § 145.
- 71-323 Repealed. Laws 1986, LB 318, § 145.
- 71-324 Repealed. Laws 1986, LB 318, § 145.
- 71-325 Repealed. Laws 1986, LB 318, § 145.
- 71-326 Repealed. Laws 1986, LB 318, § 145.
- 71-327 Repealed. Laws 1986, LB 318, § 145.
- 71-328 Repealed. Laws 1986, LB 318, § 145.
- 71-329 Repealed. Laws 1986, LB 318, § 145.
- 71-330 Repealed. Laws 1986, LB 318, § 145.
- 71-331 Repealed. Laws 1986, LB 318, § 145.
- 71-332 Repealed. Laws 1986, LB 318, § 145.
- 71-333 Repealed. Laws 1986, LB 318, § 145.
- 71-334 Repealed. Laws 1986, LB 318, § 145.
- 71-335 Repealed. Laws 1986, LB 318, § 145.
- 71-336 Repealed. Laws 1986, LB 318, § 145.
- 71-337 Repealed. Laws 1986, LB 318, § 145.
- 71-338 Repealed. Laws 1986, LB 318, § 145.

- 71-339 Repealed. Laws 1986, LB 318, § 145.
- 71-340 Transferred to section 38-1001.
- 71-341 Transferred to section 38-1002.
- 71-342 Transferred to section 38-1003.
- 71-343 Transferred to section 38-1004.
- 71-344 Transferred to section 38-1005.
- 71-345 Transferred to section 38-1006.
- 71-346 Transferred to section 38-1007.
- 71-346.01 Transferred to section 38-1008.
- 71-346.02 Transferred to section 38-1009.
- 71-346.03 Transferred to section 38-1010.
- 71-346.04 Transferred to section 38-1011.
- 71-347 Transferred to section 38-1012.
- 71-348 Transferred to section 38-1013.
- 71-349 Transferred to section 38-1014.
- 71-350 Transferred to section 38-1015.
- 71-351 Transferred to section 38-1016.
- 71-352 Transferred to section 38-1017.
- 71-353 Transferred to section 38-1018.
- 71-354 Repealed. Laws 2007, LB 463, § 1319.
- 71-355 Repealed. Laws 2007, LB 296, § 815.
- 71-356 Transferred to section 38-1019.
- 71-356.01 Transferred to section 38-1020.
- 71-356.02 Transferred to section 38-1021.
- 71-356.03 Transferred to section 38-1022.
- 71-356.04 Transferred to section 38-1023.
- 71-356.05 Transferred to section 38-1024.
- 71-357 Transferred to section 38-1025.
- 71-357.01 Transferred to section 38-1026.
- 71-357.02 Transferred to section 38-1027.
- 71-357.03 Transferred to section 38-1028.

71-358 Transferred to section 38-1029.  
71-358.01 Transferred to section 38-1030.  
71-359 Transferred to section 38-1031.  
71-360 Transferred to section 38-1032.  
71-360.01 Transferred to section 38-1033.  
71-361 Repealed. Laws 1999, LB 68, § 91.  
71-361.01 Transferred to section 38-1034.  
71-361.02 Transferred to section 38-1035.  
71-361.03 Transferred to section 38-1036.  
71-361.04 Transferred to section 38-1037.  
71-361.05 Transferred to section 38-1038.  
71-361.06 Transferred to section 38-1039.  
71-361.07 Transferred to section 38-1040.  
71-361.08 Transferred to section 38-1041.  
71-361.09 Transferred to section 38-1042.  
71-362 Transferred to section 38-1043.  
71-362.01 Transferred to section 38-1044.  
71-363 Repealed. Laws 2007, LB 463, § 1319.  
71-363.01 Transferred to section 38-1045.  
71-364 Transferred to section 38-1046.  
71-365 Transferred to section 38-1047.  
71-365.01 Transferred to section 38-1048.  
71-365.02 Transferred to section 38-1049.  
71-366 Transferred to section 71-357.01.  
71-367 Transferred to section 71-357.03.  
71-368 Transferred to section 38-1050.  
71-369 Transferred to section 38-1051.  
71-370 Transferred to section 38-1052.  
71-370.01 Transferred to section 38-1053.  
71-370.02 Transferred to section 38-1054.  
71-371 Transferred to section 38-1055.

- 71-372 Transferred to section 38-1056.
- 71-373 Repealed. Laws 2007, LB 463, § 1319.
- 71-374 Transferred to section 38-1057.
- 71-375 Repealed. Laws 2007, LB 463, § 1319.
- 71-376 Repealed. Laws 2007, LB 463, § 1319.
- 71-377 Repealed. Laws 2007, LB 463, § 1319.
- 71-378 Repealed. Laws 2007, LB 463, § 1319.
- 71-379 Repealed. Laws 2007, LB 463, § 1319.
- 71-380 Repealed. Laws 2007, LB 463, § 1319.
- 71-381 Repealed. Laws 2003, LB 242, § 154.
- 71-382 Repealed. Laws 2003, LB 242, § 154.
- 71-383 Repealed. Laws 2003, LB 242, § 154.
- 71-384 Repealed. Laws 2003, LB 242, § 154.
- 71-385 Transferred to section 38-1058.
- 71-385.01 Transferred to section 38-1059.
- 71-385.02 Transferred to section 38-1060.
- 71-386 Transferred to section 38-1061.
- 71-387 Transferred to section 38-1062.
- 71-388 Transferred to section 38-1063.
- 71-389 Transferred to section 38-1064.
- 71-390 Transferred to section 38-1065.
- 71-391 Repealed. Laws 2007, LB 463, § 1319.
- 71-392 Repealed. Laws 2007, LB 463, § 1319.
- 71-393 Repealed. Laws 2007, LB 463, § 1319.
- 71-394 Transferred to section 38-1066.
- 71-394.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-395 Transferred to section 38-1067.
- 71-396 Transferred to section 38-1068.
- 71-397 Repealed. Laws 2007, LB 463, § 1319.
- 71-398 Transferred to section 38-1069.
- 71-399 Transferred to section 38-1070.

- 71-3,100 Transferred to section 38-1071.
- 71-3,101 Transferred to section 38-1072.
- 71-3,102 Transferred to section 38-10,103.
- 71-3,103 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,104 Transferred to section 38-1073.
- 71-3,105 Transferred to section 38-1074.
- 71-3,106 Transferred to section 38-1075.
- 71-3,106.01 Transferred to section 38-1076.
- 71-3,107 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,108 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,109 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,110 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,111 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,112 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,113 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,114 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,115 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,116 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,117 Transferred to section 38-1077.
- 71-3,118 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,119 Transferred to section 38-1078.
- 71-3,119.01 Transferred to section 38-1079.
- 71-3,119.02 Transferred to section 38-1080.
- 71-3,119.03 Transferred to section 38-1081.
- 71-3,120 Transferred to section 38-1082.
- 71-3,121 Transferred to section 38-1083.
- 71-3,122 Transferred to section 38-1084.
- 71-3,123 Transferred to section 38-1085.
- 71-3,124 Transferred to section 38-1086.
- 71-3,125 Transferred to section 38-1087.
- 71-3,126 Transferred to section 38-1088.

- 71-3,127 Transferred to section 38-1089.
- 71-3,128 Transferred to section 38-1090.
- 71-3,129 Transferred to section 38-1091.
- 71-3,130 Transferred to section 38-1092.
- 71-3,131 Transferred to section 38-1093.
- 71-3,132 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,133 Transferred to section 38-1094.
- 71-3,134 Transferred to section 38-1095.
- 71-3,135 Transferred to section 38-1096.
- 71-3,136 Transferred to section 38-1097.
- 71-3,137 Transferred to section 38-1098.
- 71-3,138 Transferred to section 38-1099.
- 71-3,138.01 Repealed. Laws 2004, LB 1005, § 143.
- 71-3,138.02 Transferred to section 38-10,100.
- 71-3,139 Transferred to section 38-10,101.
- 71-3,140 Transferred to section 38-10,102.
- 71-3,141 Transferred to section 38-10,104.
- 71-3,142 Transferred to section 38-10,105.
- 71-3,143 Transferred to section 38-10,106.
- 71-3,144 Transferred to section 38-10,107.
- 71-3,145 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,146 Transferred to section 38-10,108.
- 71-3,147 Transferred to section 38-10,109.
- 71-3,148 Transferred to section 38-10,110.
- 71-3,149 Transferred to section 38-10,111.
- 71-3,150 Transferred to section 38-10,112.
- 71-3,151 Transferred to section 38-10,113.
- 71-3,152 Transferred to section 38-10,114.
- 71-3,153 Transferred to section 38-10,115.
- 71-3,154 Transferred to section 38-10,116.

71-3,155 Repealed. Laws 2007, LB 463, § 1319.

71-3,156 Transferred to section 38-10,117.

71-3,157 Transferred to section 38-10,118.

71-3,158 Transferred to section 38-10,119.

71-3,159 Transferred to section 38-10,120.

71-3,160 Transferred to section 38-10,121.

71-3,161 Transferred to section 38-10,122.

71-3,162 Transferred to section 38-10,123.

71-3,163 Transferred to section 38-10,124.

71-3,164 Transferred to section 38-10,125.

71-3,165 Repealed. Laws 2007, LB 463, § 1319.

71-3,166 Repealed. Laws 2007, LB 463, § 1319.

71-3,167 Repealed. Laws 2007, LB 463, § 1319.

71-3,168 Repealed. Laws 2007, LB 463, § 1319.

71-3,169 Transferred to section 38-10,169.

71-3,170 Transferred to section 38-10,170.

71-3,171 Repealed. Laws 2007, LB 463, § 1319.

71-3,172 Repealed. Laws 2007, LB 463, § 1319.

71-3,173 Repealed. Laws 2007, LB 463, § 1319.

71-3,174 Repealed. Laws 2007, LB 463, § 1319.

71-3,175 Repealed. Laws 2007, LB 463, § 1319.

71-3,176 Repealed. Laws 2007, LB 463, § 1319.

71-3,177 Transferred to section 38-10,171.

71-3,178 Repealed. Laws 2007, LB 463, § 1319.

71-3,179 Repealed. Laws 2007, LB 463, § 1319.

71-3,180 Transferred to section 38-10,126.

71-3,181 Transferred to section 38-10,127.

71-3,182 Repealed. Laws 2007, LB 463, § 1319.

71-3,183 Transferred to section 38-10,128.

71-3,184 Transferred to section 38-10,129.

- 71-3,185 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,186 Transferred to section 38-10,130.
- 71-3,187 Transferred to section 38-10,131.
- 71-3,188 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,189 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,190 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,191 Transferred to section 38-10,132.
- 71-3,192 Transferred to section 38-10,133.
- 71-3,193 Transferred to section 38-10,134.
- 71-3,194 Transferred to section 38-10,135.
- 71-3,195 Transferred to section 38-10,136.
- 71-3,196 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,197 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,198 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,199 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,200 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,201 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,202 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,203 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,204 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,205 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,206 Transferred to section 38-10,137.
- 71-3,207 Repealed. Laws 2002, LB 1021, § 111.
- 71-3,208 Transferred to section 38-10,138.
- 71-3,209 Repealed. Laws 2007, LB 463, § 1319.
- 71-3,210 Transferred to section 38-10,139.
- 71-3,211 Transferred to section 38-10,140.
- 71-3,212 Transferred to section 38-10,141.
- 71-3,213 Transferred to section 38-10,142.
- 71-3,214 Transferred to section 38-10,143.
- 71-3,215 Transferred to section 38-10,144.



- 71-3,216 Transferred to section 38-10,145.  
 71-3,217 Transferred to section 38-10,146.  
 71-3,218 Transferred to section 38-10,147.  
 71-3,219 Transferred to section 38-10,148.  
 71-3,220 Transferred to section 38-10,149.  
 71-3,221 Transferred to section 38-10,150.  
 71-3,222 Transferred to section 38-10,151.  
 71-3,223 Transferred to section 38-10,152.  
 71-3,224 Transferred to section 38-10,153.  
 71-3,225 Transferred to section 38-10,154.  
 71-3,226 Transferred to section 38-10,155.  
 71-3,227 Transferred to section 38-10,156.  
 71-3,228 Transferred to section 38-10,157.  
 71-3,229 Transferred to section 38-10,158.  
 71-3,230 Transferred to section 38-10,159.  
 71-3,231 Transferred to section 38-10,160.  
 71-3,232 Transferred to section 38-10,161.  
 71-3,233 Transferred to section 38-10,162.  
 71-3,234 Transferred to section 38-10,163.  
 71-3,235 Transferred to section 38-10,164.  
 71-3,236 Transferred to section 38-10,165.  
 71-3,237 Transferred to section 38-10,166.  
 71-3,238 Transferred to section 38-10,167.

#### ARTICLE 4

### HEALTH CARE FACILITIES

#### Cross References

- Assisted-Living Facility Act**, see section 71-5901.  
**Criteria for credentialing health care facilities**, see section 71-8301 et seq.  
**Medical records**, access, see section 71-8401 et seq.  
**Nursing services**, waiver of requirements at certain facilities, see sections 71-6018.01 and 71-6018.02.  
**Occupational Board Reform Act**, see section 84-933.  
**Palliative Care and Quality of Life Act**, see section 71-4501.  
**Stroke System of Care Act**, see section 71-4201.  
**Uniform Credentialing Act**, see section 38-101.

- Section  
 71-401. Act, how cited.  
 71-402. Purpose of act.

## PUBLIC HEALTH AND WELFARE

Section	
71-403.	Definitions, where found.
71-404.	Adult day service, defined.
71-405.	Ambulatory surgical center, defined.
71-406.	Assisted-living facility, defined.
71-407.	Care, defined.
71-408.	Center or group home for the developmentally disabled, defined.
71-408.01.	Children's day health service, defined.
71-409.	Critical access hospital, defined.
71-410.	Department, defined.
71-411.	Director, defined.
71-412.	General acute hospital, defined.
71-413.	Health care facility, defined.
71-414.	Health care practitioner facility, defined.
71-415.	Health care service, defined.
71-416.	Health clinic, defined.
71-417.	Home health agency, defined.
71-418.	Hospice or hospice service, defined.
71-419.	Hospital, defined.
71-419.01.	Hospital pharmacy, defined.
71-420.	Intermediate care facility, defined.
71-421.	Intermediate care facility for persons with developmental disabilities, defined.
71-422.	Long-term care hospital, defined.
71-422.01.	Memory care endorsement, defined.
71-423.	Mental health substance use treatment center, defined.
71-423.01.	Mental illness, defined.
71-424.	Nursing facility, defined.
71-425.	Pharmacy, defined.
71-426.	Psychiatric or mental hospital, defined.
71-427.	Rehabilitation hospital, defined.
71-427.01.	Representative peer review organization, defined.
71-427.02.	Remote dispensing, defined.
71-427.03.	Remote dispensing pharmacy, defined.
71-427.04.	Supervising pharmacy, defined.
71-428.	Respite care service, defined.
71-429.	Skilled nursing facility, defined.
71-430.	Substance use disorder, defined.
71-431.	Treatment, defined.
71-432.	Health care facility; health care service; licensure required.
71-433.	Health care facility; health care service; license; application.
71-434.	License fees.
71-435.	License; duration; issuance.
71-436.	License; multiple services or locations; effect.
71-436.01.	License; designation of services.
71-436.02.	Remote dispensing pharmacy license; requirements.
71-437.	Provisional license; when issued.
71-438.	Accreditation or certification; when accepted.
71-439.	Waiver of rule, regulation, or standard; when; procedure.
71-440.	Inspection by department; report.
71-441.	Inspection by State Fire Marshal; fee.
71-442.	Alternative methods for assessing compliance.
71-443.	Findings of noncompliance; review, notice; statement of compliance; procedure.
71-444.	Complaints; investigation; immunity.
71-445.	Discrimination or retaliation prohibited; action for relief authorized.
71-446.	License; temporary suspension or limitation; procedure; appeal.
71-447.	License; denied or refused renewal; grounds.
71-448.	License; disciplinary action; grounds.
71-449.	License; disciplinary actions authorized.
71-450.	License; disciplinary actions; considerations.
71-451.	License; disciplinary actions; notice.

Section	
71-452.	License; disciplinary actions; rights of licensee.
71-453.	License; disciplinary actions; informal conference; procedure.
71-454.	License; disciplinary actions; hearings; procedure.
71-455.	Appeals.
71-456.	License; reinstatement; when; procedure.
71-457.	Rules and regulations.
71-458.	Violations; penalty.
71-459.	Injunction.
71-460.	Transferred to section 71-5903.
71-461.	Transferred to section 71-5904.
71-462.	Repealed. Laws 2001, LB 398, § 96.
71-463.	Repealed. Laws 2004, LB 1005, § 144.
71-464.	Itemized billing statement; duty to provide.
71-465.	Repealed. Laws 2012, LB 782, § 253.
71-466.	Religious residential facility; exemption from licensure and regulation.
71-467.	General acute hospital; employees; influenza vaccinations; tetanus-diphtheria-pertussis vaccine; duties; record.
71-468.	Onsite vaccinations for influenza and pneumococcal disease.
71-469.	Onsite vaccinations for diphtheria, tetanus, and pertussis.
71-470.	Hospital pharmacy; license, when required; designate pharmacist in charge; duties; inspection.
71-471.	Memory care endorsement; application; qualifications.
71-472.	Memory care endorsement; qualifications; rules and regulations; fee.
71-473.	Department; duties.
71-474.	Comprehensive stroke center, designated thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital; restriction on advertisement.
71-475.	Drug; provided to patient upon discharge; records; label; documentation.

#### **71-401 Act, how cited.**

Sections 71-401 to 71-475 shall be known and may be cited as the Health Care Facility Licensure Act.

**Source:** Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31; Laws 2010, LB849, § 19; Laws 2010, LB999, § 1; Laws 2011, LB34, § 1; Laws 2011, LB542, § 1; Laws 2012, LB1077, § 1; Laws 2013, LB459, § 1; Laws 2015, LB37, § 68; Laws 2016, LB698, § 17; Laws 2016, LB722, § 12; Laws 2017, LB166, § 19; Laws 2018, LB731, § 92; Laws 2018, LB1034, § 50.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB731, section 92, with LB1034, section 50, to reflect all amendments.

**Note:** Changes made by LB731 became operative July 19, 2018. Changes made by LB1034 became effective July 19, 2018.

#### **71-402 Purpose of act.**

The purpose of the Health Care Facility Licensure Act and the Nebraska Nursing Home Act is to protect the public health, safety, and welfare by providing for the licensure of health care facilities and health care services in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such facilities and services.

**Source:** Laws 2000, LB 819, § 2.

#### **Cross References**

Nebraska Nursing Home Act, see section 71-6037.

#### **71-403 Definitions, where found.**

For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

**Source:** Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2; Laws 2010, LB849, § 20; Laws 2015, LB37, § 69; Laws 2016, LB698, § 18; Laws 2018, LB731, § 93; Laws 2018, LB1034, § 51.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB731, section 93, with LB1034, section 51, to reflect all amendments.

**Note:** Changes made by LB731 became operative July 19, 2018. Changes made by LB1034 became effective July 19, 2018.

#### **71-404 Adult day service, defined.**

(1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

(2) Adult day service does not include services provided under the Developmental Disabilities Services Act.

**Source:** Laws 2000, LB 819, § 4; Laws 2002, LB 1062, § 39.

#### **Cross References**

**Developmental Disabilities Services Act**, see section 83-1201.

#### **71-405 Ambulatory surgical center, defined.**

(1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted to and discharged from such facility within the same working day and are not permitted to stay overnight at such facility, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

**Source:** Laws 2000, LB 819, § 5.

#### **71-406 Assisted-living facility, defined.**

Assisted-living facility has the same meaning as in section 71-5903.

**Source:** Laws 2000, LB 819, § 6; Laws 2018, LB439, § 1.  
Effective date July 19, 2018.

#### **71-407 Care, defined.**

(1) Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services.

(2) For purposes of this section:

(a) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;

(b) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; and

(c) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

**Source:** Laws 2000, LB 819, § 7.

#### **71-408 Center or group home for the developmentally disabled, defined.**

Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

**Source:** Laws 2000, LB 819, § 8.

#### **71-408.01 Children's day health service, defined.**

(1) Children's day health service means a person or any legal entity which provides specialized care and treatment, including an array of social, medical, rehabilitation, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to twenty or more persons under twenty-one years of age who require such services due to medical dependence, birth trauma, congenital anomalies, developmental disorders, or functional impairment.

(2) Children's day health service does not include services provided under the Developmental Disabilities Services Act.

**Source:** Laws 2010, LB849, § 21.

#### **Cross References**

**Developmental Disabilities Services Act**, see section 83-1201.

#### **71-409 Critical access hospital, defined.**

Critical access hospital means a facility (1) with acute care inpatient beds where care or treatment is provided on an outpatient basis or on an inpatient basis to persons for an average period of not more than ninety-six hours and emergency services are provided on a twenty-four-hour basis, (2) which has formal agreements with at least one hospital and other appropriate providers for services such as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services, and (3) which is located in a rural area. For purposes of this section, rural area means a county with a population of less than one hundred thousand residents. A facility licensed as a critical access hospital shall have no more than twenty-five acute care inpatient beds.

**Source:** Laws 2000, LB 819, § 9; Laws 2004, LB 1005, § 42; Laws 2005, LB 664, § 1; Laws 2008, LB797, § 5.

#### **71-410 Department, defined.**

Department means the Division of Public Health of the Department of Health and Human Services.

**Source:** Laws 2000, LB 819, § 10; Laws 2007, LB296, § 369.

**71-411 Director, defined.**

Director means the Director of Public Health of the Division of Public Health.

**Source:** Laws 2000, LB 819, § 11; Laws 2007, LB296, § 370.

**71-412 General acute hospital, defined.**

General acute hospital means a hospital with a duly constituted governing body where medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services are provided on an inpatient or outpatient basis by the organized medical staff of such hospital.

**Source:** Laws 2000, LB 819, § 12.

**71-413 Health care facility, defined.**

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, or a skilled nursing facility.

**Source:** Laws 2000, LB 819, § 13; Laws 2013, LB23, § 26; Laws 2018, LB1034, § 52.

Effective date July 19, 2018.

**71-414 Health care practitioner facility, defined.**

Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Credentialing Act or any distinct part of such residence, office, or clinic.

**Source:** Laws 2000, LB 819, § 14; Laws 2007, LB463, § 1179.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-415 Health care service, defined.**

Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or beginning January 1, 2011, a children's day health service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

**Source:** Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43; Laws 2010, LB849, § 22.

**71-416 Health clinic, defined.**

(1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health

clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless hemodialysis or labor and delivery services are provided at such facility, or (b) a facility which provides only routine health screenings, health education, or immunizations.

(3) For purposes of this section:

(a) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic;

(b) Routine health screenings means the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources of care, if indicated; and

(c) Screening tool means a simple interview or testing procedure to collect basic information on health status.

**Source:** Laws 2000, LB 819, § 16.

**71-417 Home health agency, defined.**

Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

**Source:** Laws 2000, LB 819, § 17.

**71-418 Hospice or hospice service, defined.**

Hospice or hospice service means a person or any legal entity which provides home care, palliative care, or other supportive services to terminally ill persons and their families.

**Source:** Laws 2000, LB 819, § 18.

**71-419 Hospital, defined.**

(1) Hospital means a facility where diagnosis, treatment, medical care, obstetrical care, nursing care, or related services are provided on an outpatient basis or on an inpatient basis for a period of more than twenty-four consecutive hours to persons who have an illness, injury, or deformity or to aged or infirm persons requiring or receiving convalescent care.

(2) Hospital includes a facility or part of a facility which provides space for a general acute hospital, a rehabilitation hospital, a long-term care hospital, a critical access hospital, or a psychiatric or mental hospital.

(3) Hospital does not include a health care practitioner facility in which persons do not receive care or treatment for a period of more than twenty-four consecutive hours.

**Source:** Laws 2000, LB 819, § 19.

**71-419.01 Hospital pharmacy, defined.**

Hospital pharmacy means each facility licensed as a hospital in which the compounding, preparation for administration, or dispensing of drugs or devices pursuant to a chart order occurs for patients within the confines of the hospital with oversight by a pharmacist in charge.

**Source:** Laws 2015, LB37, § 70.

**71-420 Intermediate care facility, defined.**

Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing facility care.

**Source:** Laws 2000, LB 819, § 20.

**71-421 Intermediate care facility for persons with developmental disabilities, defined.**

Intermediate care facility for persons with developmental disabilities means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have a developmental disability.

**Source:** Laws 2000, LB 819, § 21; Laws 2013, LB23, § 27.

**71-422 Long-term care hospital, defined.**

Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.

**Source:** Laws 2000, LB 819, § 22.

**71-422.01 Memory care endorsement, defined.**

Memory care endorsement means an endorsement for the license of an assisted-living facility providing care for persons with cognitive impairments or dementia which meets the requirements for the endorsement under section 71-472.

**Source:** Laws 2016, LB698, § 19.

**71-423 Mental health substance use treatment center, defined.**

Mental health substance use treatment center means a facility where shelter, food, and counseling, supervision, diagnosis, treatment, care, rehabilitation, assessment, or related services professionally directed are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who have a mental illness or substance use disorder or both, with the intention of reducing or ameliorating the disorder or disorders or the effects of the disorder or disorders.

**Source:** Laws 2000, LB 819, § 23; Laws 2018, LB1034, § 53.  
Effective date July 19, 2018.

**71-423.01 Mental illness, defined.**



Mental illness means a wide range of mental health disorders that affect mood, thinking, and behavior and can result in significantly impaired judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for health, safety, or recovery of the individual or for the safety of others.

**Source:** Laws 2018, LB1034, § 54.  
Effective date July 19, 2018.

**71-424 Nursing facility, defined.**

Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

**Source:** Laws 2000, LB 819, § 24.

**71-425 Pharmacy, defined.**

Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, remote dispensing pharmacy, or any combination of such titles where drugs or devices are dispensed as defined in the Pharmacy Practice Act.

**Source:** Laws 2000, LB 819, § 25; Laws 2001, LB 398, § 66; Laws 2007, LB463, § 1180; Laws 2018, LB731, § 94.  
Operative date July 19, 2018.

**Cross References**

**Pharmacy Practice Act**, see section 38-2801.

**71-426 Psychiatric or mental hospital, defined.**

Psychiatric or mental hospital means a hospital that provides psychiatric services on an inpatient or outpatient basis to persons who have a mental disease, disorder, or disability.

**Source:** Laws 2000, LB 819, § 26.

**71-427 Rehabilitation hospital, defined.**

Rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons.

**Source:** Laws 2000, LB 819, § 27.

**71-427.01 Representative peer review organization, defined.**

Representative peer review organization means a utilization and quality control peer review organization as defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as such section existed on September 1, 2007.

**Source:** Laws 2007, LB203, § 3.

**71-427.02 Remote dispensing, defined.**

Remote dispensing means dispensing that occurs using remote supervision in compliance with section 71-436.02.

**Source:** Laws 2018, LB731, § 95.  
Operative date July 19, 2018.

**71-427.03 Remote dispensing pharmacy, defined.**

Remote dispensing pharmacy means a pharmacy staffed by certified pharmacy technicians in Nebraska in which remote dispensing may occur.

**Source:** Laws 2018, LB731, § 96.  
Operative date July 19, 2018.

**71-427.04 Supervising pharmacy, defined.**

Supervising pharmacy means a pharmacy licensed and located in Nebraska that owns and operates a licensed remote dispensing pharmacy.

**Source:** Laws 2018, LB731, § 97.  
Operative date July 19, 2018.

**71-428 Respite care service, defined.**

(1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a residential child-caring agency under the Children's Residential Facilities and Placing Licensure Act;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

**Source:** Laws 2000, LB 819, § 28; Laws 2002, LB 1062, § 40; Laws 2004, LB 1005, § 43; Laws 2005, LB 2, § 1; Laws 2013, LB265, § 39.

**Cross References**

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

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

**71-429 Skilled nursing facility, defined.**

Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

**Source:** Laws 2000, LB 819, § 29.

**71-430 Substance use disorder, defined.**

Substance use disorder means a medical illness caused by repeat misuse of a substance or substances, characterized by clinically significant impairments in health, social function, and impaired control over substance use and diagnosed through assessing cognitive, behavioral, and psychological symptoms. Substance use disorders range from mild to severe and from temporary to chronic.

**Source:** Laws 2000, LB 819, § 30; Laws 2018, LB1034, § 55.  
Effective date July 19, 2018.

**71-431 Treatment, defined.**

Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

**Source:** Laws 2000, LB 819, § 31.

**71-432 Health care facility; health care service; licensure required.**

A health care facility or health care service shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Health Care Facility Licensure Act. No facility or service shall hold itself out as a health care facility or health care service or as providing health care services unless licensed under the act. The department shall issue a license to health care facilities and health care services that satisfy the requirements for licensure under the act.

**Source:** Laws 2000, LB 819, § 32; Laws 2002, LB 1062, § 41.

**71-433 Health care facility; health care service; license; application.**

(1) An applicant for an initial or renewal license to operate a health care facility or health care service required to be licensed under the Health Care Facility Licensure Act shall file a written application with the department. The application shall be accompanied by the license fee set pursuant to section 71-434 and shall set forth the full name and address of the facility or service to be licensed, the full name and address of the owner of such facility or service, the names of all persons in control of the facility or service, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) two of its members, if the applicant is a limited liability company, (c) two of its officers, if the applicant is a corporation, or (d)

the head of the governmental unit having jurisdiction over the facility or service to be licensed, if the applicant is a governmental unit.

**Source:** Laws 2000, LB 819, § 33.

**71-434 License fees.**

(1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

**Source:** Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371; Laws 2013, LB23, § 28.

**71-435 License; duration; issuance.**

(1) Except as otherwise provided in the Health Care Facility Licensure Act, licenses issued pursuant to the act shall expire one year after the date of issuance or on uniform annual dates established by the department.

(2) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

**Source:** Laws 2000, LB 819, § 35.

**71-436 License; multiple services or locations; effect.**

(1) Except as otherwise provided in section 71-470, an applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

(2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

**Source:** Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43; Laws 2015, LB37, § 72.

**71-436.01 License; designation of services.**

A health care facility applying for a license as a mental health substance use treatment center shall designate whether the license is to be issued to provide services for mental health disorders, for substance use disorders, or for both mental health and substance use disorders. A license issued to provide services for mental health disorders permits the facility to treat persons whose primary need is treatment for mental health disorders. A license issued to provide services for substance use disorders permits the facility to treat persons whose primary need is treatment for substance use disorders. A license issued to provide services for both mental health and substance use disorders permits the facility to treat persons with mental health disorders, substance use disorders, or both mental health disorders and substance use disorders.

**Source:** Laws 2018, LB1034, § 56.  
Effective date July 19, 2018.

**71-436.02 Remote dispensing pharmacy license; requirements.**

(1) A pharmacy shall obtain a remote dispensing pharmacy license under the Health Care Facility Licensure Act prior to engaging in remote dispensing. A pharmacy shall not be licensed as both a remote dispensing pharmacy and a

pharmacy. At the time of initial licensure as a remote dispensing pharmacy, the remote dispensing pharmacy must be located ten driving miles or more from the nearest pharmacy. The remote dispensing pharmacy shall operate in accordance with this section.

(2) If the remote dispensing pharmacy employs a certified pharmacy technician to dispense prescription drugs, remote dispensing shall occur under remote supervision via a real-time audiovisual communication system by a licensed pharmacist employed by a supervising pharmacy. The licensed pharmacist must be licensed and located in Nebraska. If the real-time audiovisual communication system between the remote dispensing pharmacy and supervising pharmacy is not working, no remote dispensing can be completed at the remote dispensing pharmacy until the real-time audiovisual communication system is restored and working properly.

(3) The remote dispensing pharmacy must have the same pharmacist in charge as the supervising pharmacy. The pharmacist in charge must ensure that a pharmacist is onsite at the remote dispensing pharmacy at a minimum of once each calendar month. The pharmacist in charge in the supervising pharmacy may delegate tasks to another pharmacist who is employed by the supervising pharmacy, such as supervision of the certified pharmacy technician working remotely in the remote dispensing pharmacy, oversight of inventory, patient counseling, and other duties as assigned. The pharmacist supervising the certified pharmacy technician remotely is responsible for the drug utilization review, the final verification, and the supervision of the remote dispensing at the remote dispensing pharmacy.

(4) In order for remote dispensing to occur in a remote dispensing pharmacy:

(a) When a prescription is being dispensed to a patient or caregiver, the supervising pharmacist must attempt to counsel on all new prescriptions dispensed from the remote dispensing pharmacy; and

(b) The real-time audiovisual communication system must be working properly.

**Source:** Laws 2018, LB731, § 98.

Operative date July 19, 2018.

#### **71-437 Provisional license; when issued.**

A provisional license may be issued to a health care facility or health care service that substantially complies with requirements for licensure under the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose an imminent danger of death or physical harm to the persons residing in or served by such facility or service. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the facility or service fully complies with the requirements for licensure under the act and rules and regulations.

**Source:** Laws 2000, LB 819, § 37.

#### **71-438 Accreditation or certification; when accepted.**

(1) The department may accept accreditation or certification by a recognized independent accreditation body or public agency, which has standards that are

at least as stringent as those of the State of Nebraska, as evidence that the health care facility or health care service complies with the rules, regulations, and standards adopted and promulgated under the Health Care Facility Licensure Act.

(2) A facility or service licensed pursuant to an accreditation or certification accepted by the department shall notify the department if such accreditation or certification has been sanctioned, modified, terminated, or withdrawn. After giving such notice, the facility or service may continue to operate unless the department determines that the facility or service no longer meets the qualifications for licensure under the act.

**Source:** Laws 2000, LB 819, § 38; Laws 2002, LB 1062, § 44.

**71-439 Waiver of rule, regulation, or standard; when; procedure.**

(1) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(2) In evaluating the issue of unreasonable hardship, the department shall consider the following:

(a) The estimated cost of the modification or installation;

(b) The extent and duration of the disruption of the normal use of areas used by persons residing in or served by the facility or service resulting from construction work;

(c) The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to cost;

(d) The availability of financing; and

(e) The remaining useful life of the building.

(3) Any such waiver may be granted under such terms and conditions and for such period of time as provided in rules and regulations adopted and promulgated by the department.

**Source:** Laws 2000, LB 819, § 39.

**71-440 Inspection by department; report.**

The department may inspect or provide for the inspection of any health care facility or health care service licensed under the Health Care Facility Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the facility or service within ten working days after the completion of an inspection.

**Source:** Laws 2000, LB 819, § 40.

**71-441 Inspection by State Fire Marshal; fee.**

The department may request the State Fire Marshal to inspect any applicant for licensure or any licensee for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such applicant or licensee. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 2000, LB 819, § 41.

**71-442 Alternative methods for assessing compliance.**

In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a health care facility or health care service with the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act.

**Source:** Laws 2000, LB 819, § 42.

**71-443 Findings of noncompliance; review, notice; statement of compliance; procedure.**

If the inspection report issued under section 71-440 contains findings of noncompliance by a health care facility or health care service with any applicable provisions of the Health Care Facility Licensure Act or rules and regulations adopted under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed pursuant to sections 71-446 to 71-455, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in or served by the facility or service, the department may send a letter to the facility or service requesting a statement of compliance. The letter shall include a description of each such violation, a request that the facility or service submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the facility or service fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed pursuant to sections 71-446 to 71-455.

**Source:** Laws 2000, LB 819, § 43.

**71-444 Complaints; investigation; immunity.**

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Health Care Facility Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;



(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. A person submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

**Source:** Laws 2000, LB 819, § 44.

**71-445 Discrimination or retaliation prohibited; action for relief authorized.**

(1) A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

(2) A health care facility licensed pursuant to the Health Care Facility Licensure Act shall not discriminate or retaliate against any person who has initiated or participated in the making of a report under the Uniform Credentialing Act to the department. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

**Source:** Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372; Laws 2016, LB750, § 10.

**Cross References**

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

**71-446 License; temporary suspension or limitation; procedure; appeal.**

(1) If the director determines that persons receiving care or treatment at a health care facility or by a health care service are in imminent danger of death or serious physical harm, he or she may temporarily suspend or temporarily limit the license of such facility or service and may order the immediate removal of such persons and the temporary closure of the facility or service pending further action by the department. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license. A hearing shall be held no later than ten days after the date of such temporary suspension or temporary limitation.

(2) A continuance of the hearing shall be granted by the department upon written request from the licensee. Such continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director

shall take effect when served upon the facility or service. A copy of the notice shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(3) A temporary suspension or temporary limitation under this section shall not exceed ninety days. If a decision is not reached within that period, the temporary suspension or temporary limitation shall expire.

(4) Any person aggrieved by a decision of the department after a hearing as provided in this section may appeal under the Administrative Procedure Act.

**Source:** Laws 2000, LB 819, § 46.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-447 License; denied or refused renewal; grounds.**

The department may deny or refuse to renew a license under the Health Care Facility Licensure Act to any health care facility or health care service that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including (1) failing an inspection pursuant to section 71-440, (2) failing to meet a compliance assessment standard adopted under section 71-442, (3) having had a license revoked within the two-year period preceding application, or (4) any of the grounds listed in section 71-448.

**Source:** Laws 2000, LB 819, § 47.

**71-448 License; disciplinary action; grounds.**

The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services access to the health care facility or health care service for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department of Health and Human Services;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services;

- (7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;
- (8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;
- (9) Violation of the Emergency Box Drug Act or the Pharmacy Practice Act;
- (10) Failure to file a report required by section 38-1,127 or 71-552;
- (11) Violation of the Medication Aide Act;
- (12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;
- (13) Violation of the Automated Medication Systems Act; or
- (14) Violation of the Dialysis Patient Care Technician Registration Act.

**Source:** Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181; Laws 2008, LB308, § 12; Laws 2011, LB591, § 4; Laws 2015, LB37, § 73; Laws 2017, LB255, § 11.

#### Cross References

**Assisted-Living Facility Act**, see section 71-5901.  
**Automated Medication Systems Act**, see section 71-2444.  
**Dialysis Patient Care Technician Registration Act**, see section 38-3701.  
**Emergency Box Drug Act**, see section 71-2410.  
**Medication Aide Act**, see section 71-6718.  
**Nebraska Nursing Home Act**, see section 71-6037.  
**Pharmacy Practice Act**, see section 38-2801.

#### **71-449 License; disciplinary actions authorized.**

- (1) The department may impose any one or a combination of the following types of disciplinary action against the license of a health care facility or health care service:
  - (a) A fine not to exceed ten thousand dollars per violation;
  - (b) A prohibition on admissions or readmissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
  - (c) A period of probation not to exceed two years during which the facility or service may continue to operate under terms and conditions fixed by the order of probation;
  - (d) A period of suspension not to exceed three years during which the facility or service may not operate; and
  - (e) Revocation which is a permanent termination of the license and the licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

(2) Any fine imposed and unpaid under the Health Care Facility Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the facility or service is located. The department shall, within thirty

days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 2000, LB 819, § 49.

**71-450 License; disciplinary actions; considerations.**

(1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The reasonableness of the diligence exercised by the health care facility or health care service in identifying or correcting the violation;

(c) Any previous violations committed by the facility or service; and

(d) The financial benefit to the facility or service of committing or continuing the violation.

(2) The department may adopt and promulgate rules and regulations which set forth specific violations which will result in a particular disciplinary action, including the use of scope and severity determinations.

(3) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-449.

**Source:** Laws 2000, LB 819, § 50.

**71-451 License; disciplinary actions; notice.**

(1) If the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for an informal conference or a hearing pursuant to section 71-452.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

**Source:** Laws 2000, LB 819, § 51.

**71-452 License; disciplinary actions; rights of licensee.**

Within fifteen days after service of a notice under section 71-451, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request

an informal conference with a representative peer review organization with which the department has contracted, (3) desires to contest the notice and request a hearing, or (4) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.

**Source:** Laws 2000, LB 819, § 52; Laws 2007, LB203, § 5.

**71-453 License; disciplinary actions; informal conference; procedure.**

(1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, or a representative peer review organization to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under subdivision (1) or (2) of section 71-452. Within twenty working days after the conclusion of the conference, the representative or representative peer review organization shall report in writing to the department its conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and shall provide a copy of the report to the director and the applicant or licensee.

(2) Within ten working days after receiving a report under subsection (1) of this section, the department shall consider such report and affirm, modify, or dismiss the notice and shall state the specific reasons for such decision, including, if applicable, the specific reasons for not adopting the conclusion of the representative or representative peer review organization as contained in such report. The department shall provide the applicant or licensee with a copy of such decision by certified mail to the last address shown in the records of the department. If the applicant or licensee desires to contest an affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such decision that the applicant or licensee requests a hearing.

(3) If an applicant or a licensee successfully demonstrates during an informal conference or a hearing that the deficiencies should not have been cited in the notice, (a) the deficiencies shall be removed from the notice and the deficiency statement and (b) any sanction imposed solely as a result of those cited deficiencies shall be rescinded.

**Source:** Laws 2000, LB 819, § 53; Laws 2007, LB203, § 6.

**71-454 License; disciplinary actions; hearings; procedure.**

(1) If the applicant or licensee requests a hearing under section 71-452, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-455.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses

may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

**Source:** Laws 2000, LB 819, § 54.

#### **71-455 Appeals.**

Any party to a decision of the department under the Health Care Facility Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2000, LB 819, § 55.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

#### **71-456 License; reinstatement; when; procedure.**

(1) A license issued under the Health Care Facility Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the applicable fee as provided in section 71-434.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable renewal fee provided in section 71-434.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such thirty-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. A reapplication for an initial license may be made at the end of such two-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2000, LB 819, § 56; Laws 2002, LB 1062, § 45.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-457 Rules and regulations.**

(1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any health care facility or health care service licensed under the Health Care Facility Licensure Act, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of health care facilities and health care services, except nursing facilities and skilled nursing facilities, designed to further the accomplishment of the purposes of the act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

(2) The department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing facilities and skilled nursing facilities. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

**Source:** Laws 2000, LB 819, § 57; Laws 2017, LB644, § 19.

**Cross References**

Nebraska Nursing Home Act, see section 71-6037.

**71-458 Violations; penalty.**

Any person who establishes, operates, or maintains a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such facility or service operates after a first conviction shall be considered a subsequent offense.

**Source:** Laws 2000, LB 819, § 58.

**71-459 Injunction.**

The department may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required by the act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a health care facility or health care service without obtaining a license to do so, without alleging any further or more particular facts concerning the same.

**Source:** Laws 2000, LB 819, § 59.

**71-460 Transferred to section 71-5903.****71-461 Transferred to section 71-5904.****71-462 Repealed. Laws 2001, LB 398, § 96.****71-463 Repealed. Laws 2004, LB 1005, § 144.****71-464 Itemized billing statement; duty to provide.**

A health care facility or a health care practitioner facility, upon written request of a patient or a patient's representative, shall provide an itemized billing statement, including diagnostic codes, without charge to the patient or patient's representative. Such itemized billing statement shall be provided within fourteen days after the request.

**Source:** Laws 2009, LB288, § 32.

**71-465 Repealed. Laws 2012, LB 782, § 253.**

**71-466 Religious residential facility; exemption from licensure and regulation.**

Any facility which is used as a residence by members of an organization, association, order, or society organized and operated for religious purposes, which is not operated for financial gain or profit for the organization, association, order, or society, and which serves as a residence only for such members who in the exercise of their duties in the organization, association, order, or society are required to participate in congregant living within such a facility is exempt from the provisions of the Health Care Facility Licensure Act relating to licensure or regulation of assisted-living facilities, intermediate care facilities, and nursing facilities.

**Source:** Laws 2011, LB34, § 2.

**71-467 General acute hospital; employees; influenza vaccinations; tetanus-diphtheria-pertussis vaccine; duties; record.**

(1) Each general acute hospital shall take all of the following actions in accordance with the guidelines of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the guidelines existed on January 1, 2013:

- (a) Annually offer onsite influenza vaccinations to all hospital employees;
- (b) Offer to all hospital employees a single dose of tetanus-diphtheria-pertussis vaccine if they have not previously received such vaccine and regardless of the time since their most recent vaccination with such vaccine; and
- (c) Require all hospital employees to be vaccinated against influenza, tetanus, diphtheria, and pertussis, except that an employee may elect not to be vaccinated.

(2) The hospital shall keep a record of which hospital employees receive the annual vaccination against influenza and a single dose of tetanus-diphtheria-pertussis vaccine and which hospital employees do not receive such vaccinations.

(3) This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists.

**Source:** Laws 2011, LB542, § 2; Laws 2013, LB458, § 1; Laws 2014, LB859, § 1.

**71-468 Onsite vaccinations for influenza and pneumococcal disease.**

In order to prevent, detect, and control pneumonia and influenza outbreaks in Nebraska:

(1) Each general acute hospital and intermediate care facility shall annually, beginning no later than October 1 and ending on the following April 1, offer



onsite vaccinations for influenza and pneumococcal disease to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2017; and

(2) Each nursing facility and skilled nursing facility shall annually, beginning no later than October 1 and ending on the following April 1, offer onsite vaccinations for (a) influenza and pneumococcal disease to all residents and (b) influenza to all employees, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2017. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section.

**Source:** Laws 2012, LB1077, § 2; Laws 2014, LB859, § 2; Laws 2017, LB267, § 1.

**71-469 Onsite vaccinations for diphtheria, tetanus, and pertussis.**

In order to prevent, detect, and control diphtheria, tetanus, and pertussis in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall offer onsite vaccinations for diphtheria, tetanus, and pertussis to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2013. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to bear the cost of a vaccination provided pursuant to this section.

**Source:** Laws 2013, LB459, § 2; Laws 2014, LB859, § 3.

**71-470 Hospital pharmacy; license, when required; designate pharmacist in charge; duties; inspection.**

(1) A hospital in which drugs or devices are compounded, dispensed, or administered pursuant to chart orders is not required to obtain a separate license for the hospital pharmacy, except that if the compounding or dispensing of drugs or devices is done in the pharmacy at the hospital for persons not registered as patients within the confines of the hospital, the hospital shall obtain a pharmacy license. Compounding in a hospital pharmacy may occur for any hospital which is part of the same health care system under common ownership or which is a member of or an affiliated member of a formal network or partnership agreement.

(2) Beginning January 1, 2016, each hospital shall designate a pharmacist licensed in this state as being the pharmacist in charge and responsible for the practice of pharmacy and medication use procedure in such hospital, including

section 38-2867.02. The Board of Pharmacy or its designated representatives may examine and inspect the practice of pharmacy in any hospital licensed by the department.

(3) The pharmacist in charge of a hospital pharmacy shall establish and implement policies and procedures for the practice of pharmacy and medication use in the hospital.

**Source:** Laws 2015, LB37, § 71.

**71-471 Memory care endorsement; application; qualifications.**

(1) An assisted-living facility may apply to the department for a memory care endorsement on a form prescribed by the department. Only an assisted-living facility which qualifies for the endorsement may advertise itself as an endorsed memory care facility and may qualify for reimbursement rates established pursuant to section 71-473.

(2) In order to qualify for the memory care endorsement, an assisted-living facility shall provide proof of meeting the qualifications established by the department pursuant to section 71-472.

**Source:** Laws 2016, LB698, § 20.

**71-472 Memory care endorsement; qualifications; rules and regulations; fee.**

(1) The department shall adopt and promulgate rules and regulations establishing qualifications for a memory care endorsement. The qualifications shall be specific to those necessary for residents with cognitive impairment or dementia and shall include, but not be limited to, staffing enhancements, staff training, dedicated memory care programming, cultural competencies, facility requirements, and security issues.

(2) The department shall award a memory care endorsement to an assisted-living facility licensed under the Health Care Facility Licensure Act upon application which provides proof of meeting the qualifications and payment of the required fee.

(3) The department shall set the fee at an amount to cover the costs of administering the endorsement.

**Source:** Laws 2016, LB698, § 21.

**71-473 Department; duties.**

The department shall examine the rates paid for care for persons with cognitive impairment or dementia, including state spending for such care and reimbursement rates paid for such care under the medical assistance program pursuant to the Medical Assistance Act. The department shall make findings regarding cost-savings for providing care for persons with cognitive impairments or dementia in assisted-living facilities with a memory care endorsement. The department shall make recommendations regarding a higher or supplemental reimbursement rate for assisted-living facilities which have a memory care endorsement and provide care for persons with cognitive impairments or dementia at a savings to the state or medical assistance program.

**Source:** Laws 2016, LB698, § 22.

**Cross References**

Medical Assistance Act, see section 68-901.

**71-474 Comprehensive stroke center, designated thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital; restriction on advertisement.**

A person may not advertise to the public, by way of any medium, that a hospital is a comprehensive stroke center, a designated thrombectomy-capable stroke center, a primary stroke center, or an acute stroke-ready hospital unless the hospital is listed as such by the Department of Health and Human Services under the Stroke System of Care Act.

**Source:** Laws 2016, LB722, § 13; Laws 2018, LB1034, § 57.  
Effective date July 19, 2018.

**Cross References**

**Stroke System of Care Act**, see section 71-4201.

**71-475 Drug; provided to patient upon discharge; records; label; documentation.**

(1)(a) When administration of a drug occurs in a hospital pursuant to a chart order, hospital personnel may provide the unused portion of the drug to the patient upon discharge from the hospital for continued use in treatment of the patient if:

(i) The drug has been opened and used for treatment of the patient at the hospital and is necessary for the continued treatment of the patient and would be wasted if not used by the patient; and

(ii) The drug is:

(A) In a multidose device or a multidose container; or

(B) In the form of a liquid reconstituted from a dry stable state to a liquid resulting in a limited stability.

(b) A drug provided to a patient in accordance with this subsection shall be labeled with the name of the patient, the name of the drug including the quantity if appropriate, the date the drug was provided, and the directions for use.

(2)(a) A licensed health care practitioner authorized to prescribe controlled substances may provide to his or her patients being discharged from a hospital a sufficient quantity of drugs adequate, in the judgment of the practitioner, to continue treatment, which began in the hospital, until the patient is reasonably able to access a pharmacy.

(b) The pharmacist-in-charge at the hospital shall maintain records of the drugs provided to patients in accordance with this subsection which shall include the name of the patient, the name of the drug including the quantity if appropriate, the date the drug was provided, and the directions for use.

(3) If a drug is provided to a patient in accordance with this section:

(a) The drug shall be kept in a locked cabinet or automated medication system with access only by a licensed health care practitioner authorized to prescribe, dispense, or administer controlled substances;

(b) Prior to providing the drug to the patient, a written or electronic order shall be in the patient's record;

(c) The process at the hospital shall be under the direct supervision of the prescriber;

- (d) If the label is prepared by a nurse, the prescriber shall verify the drug and the directions for the patient;
- (e) When possible, the directions for the patient shall be preprinted on the label by the pharmacist;
- (f) The label shall include the name of the patient, the name of the drug including the quantity if appropriate, the date the drug was provided, and the directions for use;
- (g) A written information sheet shall be given to the patient for each drug provided; and
- (h) Documentation in a readily retrievable format shall be maintained each time a drug is provided to a patient from the hospital pharmacy's inventory which shall include the date, the patient, the drug, and the prescriber.

**Source:** Laws 2017, LB166, § 20.

**ARTICLE 5  
DISEASES**

**Cross References**

- Animals, diseased, reports, destruction, disposition,** see sections 54-742 to 54-753.
- Cancer and smoking disease research,** see section 81-637 et seq.
- Chronic renal disease,** see section 71-4901 et seq.
- Discrimination because of AIDS prohibited,** see sections 20-167 to 20-169.
- Immunizations, insurance coverage,** see section 44-784.
- Meningococcal disease,** see section 85-902.
- Municipalities, regulatory powers of:**
  - Cities of the first class, see sections 16-238, 16-321, and 16-405.
  - Cities of the metropolitan class, see sections 14-103 and 14-508.
  - Cities of the primary class, see sections 15-236 and 15-403.
  - Cities of the second class and villages, see sections 17-121, 17-207, 17-568.01, and 17-613.
- Parkinson's Disease Registry Act,** see section 81-697.
- Tuberculosis Detection and Prevention Act,** see section 71-3601.01.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

- Section
- 71-501. Contagious diseases; local public health department; county board of health; powers and duties.
  - 71-501.01. Acquired immunodeficiency syndrome; legislative findings.
  - 71-501.02. Acquired immunodeficiency syndrome program; department; powers.
  - 71-502. Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services.
  - 71-502.01. Sexually transmitted diseases; enumerated.
  - 71-502.02. Sexually transmitted diseases; rules and regulations.
  - 71-502.03. Pregnant women; subject to syphilis test; fee; human immunodeficiency virus infection test.
  - 71-502.04. Laboratory; test results; notification required.
  - 71-503. Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty.
  - 71-503.01. Reports required; confidentiality; limitations on use; immunity.
  - 71-503.02. Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.
  - 71-503.03. Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.
  - 71-504. Sexually transmitted diseases; minors; treatment without consent of parent; expenses.
  - 71-505. Department of Health and Human Services; public health; duties; fees.
  - 71-506. Violations; penalty; enforcement.
  - 71-507. Terms, defined.
  - 71-508. Exposure to infectious disease or condition; form; department; duties.

## DISEASES

- Section  
71-509. Health care facility or alternate facility; emergency services provider; significant exposure; completion of form; reports required; tests; notification; costs.
- 71-510. Emergency services provider; public safety official; significant exposure; testing; conditions.
- 71-511. Information or test; confidentiality.
- 71-512. Health care facilities; provider agencies; adopt procedures.
- 71-513. Immunity from liability; when.
- 71-514. Repealed. Laws 1983, LB 44, § 1.
- 71-514.01. Health care providers; legislative findings.
- 71-514.02. Health care providers; terms, defined.
- 71-514.03. Health care providers; significant exposure to blood or body fluid; procedure; cost; restriction.
- 71-514.04. Health care providers; patient information or test results; confidentiality; release of information.
- 71-514.05. Health care providers; provider agencies; adopt procedures.
- 71-515. Repealed. Laws 1983, LB 44, § 1.
- (b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT
- 71-516. Repealed. Laws 1991, LB 10, § 7.
- 71-516.01. Act, how cited.
- 71-516.02. Legislative findings and declarations.
- 71-516.03. Terms, defined.
- 71-516.04. Facility; disclosures required; department; duties.
- 71-517. Memory care endorsement.
- 71-518. Repealed. Laws 1991, LB 10, § 7.
- (c) INHERITED OR CONGENITAL INFANT OR CHILDHOOD-ONSET DISEASES
- 71-519. Screening test; duties; disease management; duties; fees authorized; immunity from liability.
- 71-520. Food supplement and treatment services program; authorized; fees.
- 71-521. Tests and reports; department; duties.
- 71-522. Central data registry; department; duties; use of data.
- 71-523. Departments; powers and duties; adopt rules and regulations; contracting laboratories; requirements; fees.
- 71-524. Enforcement; procedure.
- (d) CERVICAL CANCER
- 71-525. Repealed. Laws 1993, LB 536, § 128.
- (e) IMMUNIZATION AND VACCINES
- 71-526. Act, how cited.
- 71-527. Legislative findings and declarations.
- 71-528. Intent and purpose.
- 71-529. Statewide immunization action plan; department; powers.
- 71-530. Act; entitlement not created; availability of funds; effect.
- (f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION
- 71-531. Test; anonymous testing; referral for treatment; person committed to the Department of Correctional Services; department; duties.
- 71-532. Test results reportable; manner.
- (g) INFECTED HEALTH CARE WORKERS
- 71-533. Repealed. Laws 2002, LB 93, § 27.
- 71-534. Repealed. Laws 2002, LB 93, § 27.
- 71-535. Repealed. Laws 2002, LB 93, § 27.
- 71-536. Repealed. Laws 2002, LB 93, § 27.
- 71-537. Repealed. Laws 2002, LB 93, § 27.
- 71-538. Repealed. Laws 2002, LB 93, § 27.
- (h) EXCHANGE OF IMMUNIZATION INFORMATION
- 71-539. Legislative intent.

§ 71-501

PUBLIC HEALTH AND WELFARE

Section

- 71-540. Immunization information; nondisclosure.
- 71-541. Immunization information system; immunization information; access; fee.
- 71-541.01. Immunization information system; established; purpose; access to records authorized.
- 71-542. Immunization information system; immunization information; confidentiality; violation; penalty.
- 71-543. Rules and regulations.
- 71-544. Immunity.

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

- 71-545. Repealed. Laws 2008, LB 928, § 47.
- 71-546. Repealed. Laws 2008, LB 928, § 47.
- 71-547. Repealed. Laws 2008, LB 928, § 47.
- 71-548. Repealed. Laws 2008, LB 928, § 47.
- 71-549. Repealed. Laws 2008, LB 928, § 47.
- 71-550. Repealed. Laws 2008, LB 928, § 47.

(j) GENETIC TESTS

- 71-551. Physician; genetic tests; written informed consent; requirements; Department of Health and Human Services; duty.

(k) SYNDROMIC SURVEILLANCE PROGRAM

- 71-552. Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.

(l) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

- 71-553. Act, how cited.
- 71-554. Legislative findings.
- 71-555. Terms, defined.
- 71-556. Newborn; critical congenital heart disease screening; responsibilities.
- 71-557. Department; duties; rules and regulations.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

**71-501 Contagious diseases; local public health department; county board of health; powers and duties.**

(1) The local public health department as defined in section 71-1626 or the county board of a county that has not established or joined in the establishment of a local public health department shall make and enforce regulations to prevent the introduction and spread of contagious, infectious, and malignant diseases in the county or counties under its jurisdiction.

(2) The county board of a county that has not established or joined in the establishment of a local public health department shall establish a county board of health consisting of three members: The sheriff, who shall be chairperson and quarantine officer; a physician who resides permanently in the county, but if the county has no resident physician, then one conveniently situated, who shall be medical adviser, and who shall be chosen by the county board; and the county clerk, who shall be secretary. The county board may pay the chairperson of the county board of health a salary for such services not to exceed fifty dollars per month, as fixed by the county board.

(3) The local public health department or the county board of health shall make rules and regulations to safeguard the health of the people and prevent nuisances and insanitary conditions and shall enforce and provide penalties for the violation of such rules and regulations for the county or counties under its

jurisdiction except for incorporated cities and villages. If the local public health department or the county board of health fails to enact such rules and regulations, it shall enforce the rules and regulations adopted and promulgated by the Department of Health and Human Services.

**Source:** Laws 1901, c. 49, § 1, p. 403; Laws 1903, c. 62, § 1, p. 358; Laws 1911, c. 79, § 1, p. 328; Laws 1919, c. 55, § 1, p. 159; Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 1, p. 779; Laws 1921, c. 71, § 1, p. 270; C.S.1922, § 8222; C.S.1929, § 71-2301; R.S.1943, § 71-501; Laws 1951, c. 228, § 1, p. 829; Laws 1971, LB 43, § 1; Laws 1996, LB 1044, § 486; Laws 1997, LB 197, § 2; Laws 1999, LB 272, § 23; Laws 2004, LB 1005, § 53; Laws 2007, LB296, § 374.

A county board of health may be compelled by mandamus to abate a nuisance endangering health where the existence of the nuisance is not in dispute. *State ex rel. Glatfelter v. Clark*, 106 Neb. 59, 182 N.W. 569 (1921).

Employment of a physician to aid in bringing an epidemic under control is within the express authority given the county board to provide regulations to prevent the spread of contagious

diseases. *Bartlett v. Dahlsten*, 104 Neb. 738, 178 N.W. 636 (1920).

A county is not liable for necessities furnished to persons, not paupers, while quarantined for the public safety where such liability is not expressly imposed by statute. *Dodge County v. Diers*, 69 Neb. 361, 95 N.W. 602 (1903).

#### **71-501.01 Acquired immunodeficiency syndrome; legislative findings.**

The Legislature recognizes that acquired immunodeficiency syndrome, AIDS, is an incurable life-threatening illness which is epidemic in the United States. Persons who suffer from acquired immunodeficiency syndrome and its related diseases and conditions must receive appropriate and humane care. All members of the general public must have accurate and complete information concerning the characteristics of the disease and the avoidance of infection. The public must be motivated to protect themselves and others against the spread of the disease. The successful containment of the epidemic calls for strong commitment and support from all segments of our society. It is the intent of the Legislature to authorize a program of services to protect the public health.

**Source:** Laws 1988, LB 1012, § 1.

#### **71-501.02 Acquired immunodeficiency syndrome program; department; powers.**

The Department of Health and Human Services may establish and administer a statewide acquired immunodeficiency syndrome program for the purpose of providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

- (1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 71-501.01 and this section;
- (2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Health and Human Services Cash Fund;
- (3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;

(4) Contract or provide for voluntary, anonymous, or confidential screening, testing, and counseling services. All sites providing such services pursuant to a contract with the department shall provide services on an anonymous basis if so requested by the individual seeking such services. The department may charge and permit its contractors to charge an administrative fee or may request donations to defer the cost of the services but shall not deny the services for failure to pay any administrative fee or for failure to make a donation;

(5) Cooperate with the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and

(6) To the extent funds are available, offer services that are culturally and language specific upon request to persons identified as having tested positive for the human immunodeficiency virus infection. Such services shall include, but not be limited to, posttest counseling, partner notification, and such early intervention services as case management, behavior modification and support services, laboratory quantification of lymphocyte subsets, immunizations, Mantoux testing for tuberculosis, prophylactic treatment, and referral for other medical and social services.

**Source:** Laws 1988, LB 1012, § 2; Laws 1994, LB 819, § 1; Laws 1996, LB 1044, § 487; Laws 2005, LB 301, § 12; Laws 2007, LB296, § 375.

#### **71-502 Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services.**

The Department of Health and Human Services shall have supervision and control of all matters relating to necessary communicable disease control and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease. In addition to such general and standing rules and regulations, (1) in cases of emergency in which the health of the people of the entire state or any locality in the state is menaced by or exposed to any contagious, infectious, or epidemic disease, illness, or poisoning, (2) when a local board of health having jurisdiction of a particular locality fails or refuses to act with sufficient promptitude and efficiency in any such emergency, or (3) in localities in which no local board of health has been established, as provided by law, the department shall adopt, promulgate, and enforce special communicable disease control rules and regulations such as the occasion and proper protection of the public health may require. All necessary expenses incurred in the enforcement of such rules and regulations shall be paid by the city, village, or county for and within which the same have been incurred. All officers and other persons shall obey and enforce such communicable disease control rules and regulations as may be adopted and promulgated by the department.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 2, p. 779; C.S.1922, § 8223; C.S.1929, § 71-2302; R.S.1943, § 71-502; Laws 1977, LB 39, § 149; Laws 1986, LB 763, § 1; Laws 1988, LB 1012, § 3; Laws 1996, LB 1044, § 488; Laws 2007, LB296, § 376.



Sanitation and quarantine are placed under the former Department of Health. *Petersen Baking Co. v. Bryan*, 124 Neb. 464, 247 N.W. 39 (1933).

A physician, acting under orders of the state board of health to quarantine a disease in a county, may recover from the

county actual expenses incurred and the value of services rendered. *Shidler v. York County*, 95 Neb. 652, 146 N.W. 949 (1914).

#### **71-502.01 Sexually transmitted diseases; enumerated.**

Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health and Human Services may from time to time specify.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 1, p. 802; C.S.1922, § 8298; C.S.1929, § 71-2901; R.S.1943, § 71-1101; R.S.1943, (1986), § 71-1101; Laws 1988, LB 1012, § 4; Laws 1996, LB 1044, § 489; Laws 2007, LB296, § 377.

#### **71-502.02 Sexually transmitted diseases; rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress sexually transmitted diseases.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 2, p. 802; C.S.1922, § 8299; C.S.1929, § 71-2902; R.S.1943, § 71-1102; R.S.1943, (1986), § 71-1102; Laws 1988, LB 1012, § 5; Laws 1996, LB 1044, § 490; Laws 2007, LB296, § 378.

#### **71-502.03 Pregnant women; subject to syphilis test; fee; human immunodeficiency virus infection test.**

(1) Every physician, or other person authorized by law to practice obstetrics, who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Department of Health and Human Services on standard forms prescribed and furnished by the department. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the department and shall be made at a laboratory approved to make such tests by the department. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health and Human Services Laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken

from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

(2) Every physician or other person authorized by law to practice obstetrics who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation shall administer or cause to be administered a test of the pregnant woman's blood for the presence of the human immunodeficiency virus infection unless the pregnant woman has given written informed consent that she does not want to be tested.

**Source:** Laws 1943, c. 149, § 1, p. 536; R.S.1943, § 71-1116; Laws 1967, c. 447, § 1, p. 1390; Laws 1983, LB 617, § 19; Laws 1986, LB 1047, § 3; R.S.1943, (1986), § 71-1116; Laws 1988, LB 1012, § 6; Laws 1996, LB 1044, § 491; Laws 2007, LB296, § 379; Laws 2018, LB285, § 1.  
Effective date July 19, 2018.

#### **71-502.04 Laboratory; test results; notification required.**

Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify shall promptly notify the official local health department or the Department of Health and Human Services of such findings.

Each notification shall give the date and result of the test performed, the name and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report shall be deemed satisfactory notification.

**Source:** Laws 1967, c. 447, § 2, p. 1391; R.S.1943, (1986), § 71-1117; Laws 1988, LB 1012, § 7; Laws 1992, LB 1019, § 46; Laws 1994, LB 819, § 2; Laws 1996, LB 1044, § 492; Laws 1997, LB 197, § 3; Laws 2007, LB296, § 380.

#### **71-503 Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty.**

All attending physicians shall report to the official local health department or the Department of Health and Human Services promptly, upon the discovery thereof, the existence of any contagious or infectious diseases and such other disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify. Any attending physician, knowing of the existence of any such disease, illness, or poisoning, who fails promptly to report the same in accordance with this section, shall be deemed guilty of a Class V misdemeanor for each offense.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 3, p. 780; C.S.1922, § 8224; C.S.1929, § 71-2303; R.S.1943, § 71-503; Laws 1967, c. 441, § 1, p. 1381; Laws 1977, LB 39, § 150; Laws 1986, LB 763, § 2; Laws 1996, LB 1044, § 493; Laws 2007, LB296, § 381.

**71-503.01 Reports required; confidentiality; limitations on use; immunity.**

(1) Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute allows medical practitioners or other persons to prescribe, provide, or dispense prescription drugs pursuant to sections 71-503.02 and 71-503.03 or requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services or any county or city board of health, local public health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations and such prescription, provision, or dispensing of prescription drugs and records pertaining thereto shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

(2) In order to further the protection of public health, such reports, notifications, and prescription, provision, or dispensing of prescription drugs may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained except as required for delivery of such prescription drugs pursuant to sections 71-503.02 and 71-503.03. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

(3) The appropriate board, health department, agency, or official may: (a) Publish analyses of reports, information, and the notifications described in subsection (1) of this section for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (b) discuss the report or notification with the attending physician; and (c) make such investigation as deemed necessary.

(4) Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications or prescribing, providing, or dispensing such prescription drugs pursuant to sections 71-503.02 and 71-503.03 shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications or pursuant to prescription, provision, or dispensing of such prescription drugs.

**Source:** Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB

819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382; Laws 2013, LB528, § 3.

**71-503.02 Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.**

If a physician, a physician assistant, a nurse practitioner, or a certified nurse midwife licensed under the Uniform Credentialing Act diagnoses a patient as having chlamydia or gonorrhea, the physician may prescribe, provide, or dispense pursuant to section 38-2850 and the physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide drug samples of prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. Adequate directions for use and medication guides, where applicable, shall be provided along with additional prescription oral antibiotic drugs for any additional partner. The physician, physician assistant, nurse practitioner, or certified nurse midwife shall at the same time provide written information about chlamydia and gonorrhea to the patient for the patient to provide to the partner or partners. The oral antibiotic drugs prescribed, provided, or dispensed pursuant to this section must be stored, dispensed, and labeled in accordance with federal and state pharmacy laws and regulations. Prescriptions for the patient's sexual partner or partners must include the partner's name. If the infected patient is unwilling or unable to deliver such prescription oral antibiotic drugs to his or her sexual partner or partners, such physician may prescribe, provide, or dispense pursuant to section 38-2850 and such physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide samples of the prescription oral antibiotic drugs for delivery to such partner, if such practitioner has sufficient locating information.

**Source:** Laws 2013, LB528, § 1.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-503.03 Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out section 71-503.02.

**Source:** Laws 2013, LB528, § 2.

**71-504 Sexually transmitted diseases; minors; treatment without consent of parent; expenses.**

The chief medical officer as designated in section 81-3115, or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for sexually transmitted diseases and prescribe for and treat such person for sexually transmitted diseases including prophylactic treatment for exposure to sexually transmitted diseases whenever such person is suspected of having a sexually transmitted disease or contact with anyone having a sexually transmitted disease. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any

other person having custody of such person. In any such case, the chief medical officer, or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The chief medical officer or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered if reasonable care is taken to elicit from any such person who is under twenty years of age any history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of such treatment to minors under their custody. In the event such person is affected with a sexually transmitted disease, the chief medical officer or local director of health may cause an interview of the person by a sexually transmitted disease investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection.

**Source:** Laws 1972, LB 1096, § 1; R.S.1943, (1986), § 71-1121; Laws 1988, LB 1012, § 9; Laws 1996, LB 1044, § 495; Laws 1997, LB 197, § 5; Laws 2007, LB296, § 383.

**71-505 Department of Health and Human Services; public health; duties; fees.**

(1) The Department of Health and Human Services shall secure and maintain in all parts of the state an official record and notification of reportable diseases, illnesses, or poisonings, provide popular literature upon the different branches of public health and distribute the same free throughout the state in a manner best calculated to promote that interest, prepare and exhibit in the different communities of the state public health demonstrations accompanied by lectures and audiovisual aids, provide preventive services to protect the public, and in all other effective ways prevent the origin and spread of disease and promote the public health.

(2) The department may provide technical services to and on behalf of health care providers and may charge fees for such services in an amount sufficient to recover the administrative costs of such services. Such fees shall be paid into the state treasury and credited to the Health and Human Services Cash Fund.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 5, p. 781; C.S.1922, § 8226; C.S.1929, § 71-2305; R.S.1943, § 71-505; Laws 1986, LB 763, § 4; Laws 1988, LB 1012, § 10; Laws 1996, LB 1044, § 496; Laws 2005, LB 301, § 14; Laws 2007, LB296, § 384.

**71-506 Violations; penalty; enforcement.**

Any person violating any of the provisions of sections 71-501 to 71-505, 71-507 to 71-513, or 71-514.01 to 71-514.05 or section 71-531 shall be guilty of a Class V misdemeanor for each offense, except that any person who willfully or maliciously discloses, except as provided by law, the content of any reports, notifications, or resulting investigations made under section 71-502 and subject to the confidentiality provisions of section 71-503.01 shall be guilty of a Class III misdemeanor. The Attorney General or the county attorney may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person or any private or public entity for violating sections 71-501 to 71-505, 71-507 to 71-513, or

71-514.01 to 71-514.05 or section 71-531 and the rules and regulations adopted and promulgated under such sections.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 6, p. 781; C.S.1922, § 8227; C.S.1929, § 71-2306; R.S.1943, § 71-506; Laws 1977, LB 39, § 151; Laws 1988, LB 1012, § 11; Laws 1989, LB 157, § 8; Laws 1994, LB 819, § 4.

**71-507 Terms, defined.**

For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider;

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

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider licensed pursuant to the Emergency Medical Services Practice Act or authorized pursuant to the EMS Personnel Licensure Interstate Compact, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a paid or volunteer firefighter, a school district employee, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 38-1414 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 38-1419;

(7) Health care facility has the meaning found in sections 71-419, 71-420, 71-424, and 71-429 or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers or public safety officials;

(12) Public safety official means a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a paid or volunteer firefighter, a school district

employee, and any civilian law enforcement employee or volunteer performing his or her duties, other than those as an emergency services provider;

(13) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(14) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a patient or individual have entered the body of an emergency services provider or public safety official through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's or individual's body fluids may have entered the emergency services provider's or public safety official's body or when an airborne pathogen may have been transmitted from the patient or individual to the emergency services provider or public safety official; and

(15) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

**Source:** Laws 1989, LB 157, § 1; Laws 1991, LB 244, § 2; Laws 1992, LB 1138, § 20; Laws 1994, LB 1210, § 111; Laws 1996, LB 1044, § 497; Laws 1996, LB 1155, § 27; Laws 1997, LB 138, § 46; Laws 1997, LB 608, § 5; Laws 1999, LB 781, § 1; Laws 2000, LB 819, § 95; Laws 2003, LB 55, § 1; Laws 2006, LB 1115, § 36; Laws 2007, LB296, § 385; Laws 2007, LB463, § 1182; Laws 2018, LB1034, § 58.

Effective date July 19, 2018.

#### Cross References

Emergency Medical Services Practice Act, see section 38-1201.  
EMS Personnel Licensure Interstate Compact, see section 38-3801.

#### **71-508 Exposure to infectious disease or condition; form; department; duties.**

The department shall prescribe a form for use by the emergency services provider to notify the health care facility or alternate facility and the designated physician that the provider believes he or she has had a significant exposure to an infectious disease or condition. The form shall include identifying information for the emergency services provider, the provider agency, the designated physician, the patient, the patient's attending physician, and the receiving health care facility or alternate facility, a description of the exposure, a description of the protective measures and equipment used by the provider to minimize exposure hazard, and such other information as is necessary to protect the public health and safety and to implement sections 71-507 to 71-513.

**Source:** Laws 1989, LB 157, § 2; Laws 1997, LB 138, § 47.

#### **71-509 Health care facility or alternate facility; emergency services provider; significant exposure; completion of form; reports required; tests; notification; costs.**

(1) If a health care facility or alternate facility determines that a patient treated or transported by an emergency services provider has been diagnosed

or detected with an infectious airborne disease, the health care facility or alternate facility shall notify the department as soon as practical but not later than forty-eight hours after the determination has been made. The department shall investigate all notifications from health care facilities and alternate facilities and notify as soon as practical the physician medical director of each emergency medical service with an affected out-of-hospital emergency medical services provider employed by or associated with the service, the fire chief of each fire department with an affected firefighter employed by or associated with the department, the head of each law enforcement agency with an affected peace officer employed by or associated with the agency, the funeral director of each funeral establishment with an affected individual employed by or associated with the funeral establishment, and any emergency services provider known to the department with a significant exposure who is not employed by or associated with an emergency medical service, a fire department, a law enforcement agency, or a funeral establishment. Notification of affected individuals shall be made as soon as practical.

(2) Whenever an emergency services provider believes he or she has had a significant exposure while acting as an emergency services provider, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency services provider to the health care facility or alternate facility, to the emergency services provider's supervisor, and to the designated physician.

(3) Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease or condition or information is received from which it may be concluded that a patient has an infectious disease or condition, the health care facility or alternate facility receiving the form shall notify the designated physician pursuant to subsection (5) of this section. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of the designated physician, the health care facility or alternate facility shall request the patient's attending physician or other responsible person to order the necessary diagnostic testing of the patient to determine the presence of an infectious disease or condition. Upon such request, the patient's attending physician or other responsible person shall order the necessary diagnostic testing subject to section 71-510. Each health care facility shall develop a policy or protocol to administer such testing and assure confidentiality of such testing.

(4) Results of tests conducted under this section and section 71-510 shall be reported by the health care facility or alternate facility that conducted the test to the designated physician and to the patient's attending physician, if any.

(5) Notification of the patient's diagnosis of infectious disease or condition, including the results of any tests, shall be made orally to the designated physician within forty-eight hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within seventy-two hours of confirmed diagnosis.

(6) Upon receipt of notification under subsection (5) of this section, the designated physician shall notify the emergency services provider of the exposure to infectious disease or condition and the results of any tests conducted under this section and section 71-510.

(7) The notification to the emergency services provider shall include the name of the infectious disease or condition diagnosed but shall not contain the



patient's name or any other identifying information. Any person receiving such notification shall treat the information received as confidential and shall not disclose the information except as provided in sections 71-507 to 71-513.

(8) The provider agency shall be responsible for the costs of diagnostic testing required under this section and section 71-510, except that if a person renders emergency care gratuitously as described in section 25-21,186, such person shall be responsible for the costs.

(9) The patient's attending physician shall inform the patient of test results for all tests conducted under such sections.

**Source:** Laws 1989, LB 157, § 3; Laws 1997, LB 138, § 48; Laws 1999, LB 781, § 2.

**71-510 Emergency services provider; public safety official; significant exposure; testing; conditions.**

(1) The patient or individual shall be informed that he or she has the right to consent to the test for presence of an infectious disease or condition and that if the patient or individual refuses the test, such refusal will be communicated to the emergency services provider or public safety official.

(2) If the patient or individual is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's or individual's next of kin or legal guardian.

(3) If an emergency services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B, hepatitis C, or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B, hepatitis C, or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency services provider. The emergency services provider may petition the district court for an order mandating that the test be performed.

(4) If a public safety official believes he or she has had a significant exposure while performing his or her duties, other than those as an emergency services provider, which, in the opinion of a physician, could involve exposure to an infectious disease or condition, the public safety official or the provider agency which employs or directs him or her may (a) request the individual who may have transmitted the infectious disease or condition to consent to having the necessary diagnostic blood tests performed or (b) if the individual refuses to consent to such tests, petition the district court for an order mandating that the necessary diagnostic blood tests of such individual be performed.

(5) If a patient or individual is deceased, no consent shall be required to test for the presence of an infectious disease or condition.

(6) If the State of Nebraska serves as guardian for the patient or individual and refuses to grant consent to test for the presence of an infectious disease or condition, the state as guardian (a) shall be subject to the jurisdiction of the district court upon the filing of a petition for an order mandating that the test

be performed and (b) shall not have sovereign immunity in such suit or proceeding.

**Source:** Laws 1989, LB 157, § 4; Laws 1997, LB 138, § 49; Laws 2003, LB 55, § 2; Laws 2006, LB 1115, § 37.

**71-511 Information or test; confidentiality.**

(1) Information concerning any patient, individual, or test results obtained under sections 71-507 to 71-513 shall be maintained as confidential by the health care facility or alternate facility that received or tested the patient or individual, the designated physician, the patient's attending physician, the emergency services provider, the public safety official, and the provider agency except as provided by the Health Care Facility Licensure Act and sections 71-503.01 and 71-507 to 71-513 and the rules and regulations adopted and promulgated pursuant to such act and sections. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such act and sections.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or individual or, if the patient or individual is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

**Source:** Laws 1989, LB 157, § 5; Laws 1997, LB 138, § 50; Laws 2000, LB 819, § 96; Laws 2003, LB 55, § 3.

**Cross References**

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

**71-512 Health care facilities; provider agencies; adopt procedures.**

All health care facilities and provider agencies subject to sections 71-507 to 71-513 shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards, notification procedures, and post-exposure risk-reduction methods.

**Source:** Laws 1989, LB 157, § 6; Laws 1997, LB 138, § 51.

**71-513 Immunity from liability; when.**

Any health care facility, provider agency, or agent, employee, administrator, physician, or other representative of such health care facility or provider agency who in good faith provides or fails to provide notification, testing, or other action as required by sections 71-507 to 71-513 shall have immunity from any liability, either criminal or civil, that might result by reason of such action or inaction.

**Source:** Laws 1989, LB 157, § 7.

**71-514 Repealed. Laws 1983, LB 44, § 1.**

**71-514.01 Health care providers; legislative findings.**

The Legislature hereby finds that health care providers are at risk of significant exposure to the blood and other body fluids of patients as a result of their work. The testing of such body fluids for the presence of infectious disease is necessary to provide postexposure risk-reduction methods and treatment, if

necessary, for health care providers when there is a significant exposure to the body fluid of a patient and there are unresolved issues of consent by the patient to the testing of such fluids.

**Source:** Laws 1994, LB 819, § 7.

**71-514.02 Health care providers; terms, defined.**

For purposes of sections 71-514.01 to 71-514.05:

(1) Health care provider means a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary. Health care provider does not mean an emergency services provider as defined in section 71-507;

(2) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health and Human Services may from time to time specify;

(3) Patient means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency means any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

**Source:** Laws 1994, LB 819, § 8; Laws 1996, LB 1044, § 498; Laws 1997, LB 138, § 52; Laws 2003, LB 667, § 6; Laws 2007, LB296, § 386.

**71-514.03 Health care providers; significant exposure to blood or body fluid; procedure; cost; restriction.**

(1) If a health care provider has a significant exposure to the blood or body fluid of a patient as determined and documented by a designated representative of the provider agency according to a written protocol:

(a) The patient shall be informed that he or she has the right to consent to the diagnostic testing of his or her body fluid for presence of an infectious disease or condition and that if the patient refuses to grant consent, such refusal shall be communicated to the health care provider;

(b) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal guardian;

(c) If the patient or patient's next of kin or legal guardian refuses to grant consent for such testing and a sample of the patient's blood or other body fluid is available, the sample shall be tested for the presence of infectious disease or condition. If an available sample of blood or other body fluid is tested without consent, the patient or patient's next of kin or legal guardian shall be notified that the available sample is being tested and informed of the purpose of the test and test results. If the human immunodeficiency virus test result is positive, the health care provider or provider agency shall refer the patient for posttest counseling. If the patient or patient's guardian refuses to grant consent and a

sample of the patient's blood or other body fluid is not available, the health care provider or provider agency may petition the district court for an order mandating that the testing be performed; or

(d) If a patient dies without the opportunity to consent to such testing, testing for the presence of an infectious disease or condition shall be conducted.

(2) The provider agency shall be responsible for the cost of such diagnostic testing.

(3) Routine drawing of a sample of blood or other body fluid for the purpose of testing for infectious disease or conditions without obtaining consent shall be prohibited.

**Source:** Laws 1994, LB 819, § 9.

**71-514.04 Health care providers; patient information or test results; confidentiality; release of information.**

(1) Information concerning any patient or test results obtained under section 71-514.03 shall be maintained as confidential by the health care facility that received or tested the patient, the patient's attending physician, the health care provider, and the provider agency except as provided by section 71-503.01 and the rules and regulations adopted and promulgated pursuant to such section. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such section.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

**Source:** Laws 1994, LB 819, § 10.

**71-514.05 Health care providers; provider agencies; adopt procedures.**

Provider agencies shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards and postexposure risk-reduction methods. All records regarding any tests made as a result of a significant exposure of a health care provider to blood or other body fluid shall be kept only for the purpose of medical surveillance of an occupational risk of the health care provider.

**Source:** Laws 1994, LB 819, § 11.

**71-515 Repealed. Laws 1983, LB 44, § 1.**

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

**71-516 Repealed. Laws 1991, LB 10, § 7.**

**71-516.01 Act, how cited.**

Sections 71-516.01 to 71-517 shall be known and may be cited as the Alzheimer's Special Care Disclosure Act.

**Source:** Laws 1994, LB 1210, § 162; Laws 2016, LB698, § 23.

**71-516.02 Legislative findings and declarations.**

The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and assisted-living facilities claim special care for persons who have Alzheimer's disease, dementia, or a related disorder;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of such claims;

(3) The provisions of the Alzheimer's Special Care Disclosure Act are intended to require such facilities to disclose the reasons for those claims, require records of such disclosures to be kept, and require the department to examine the records; and

(4) Alzheimer's special care units provide care for persons with cognitive impairments and dementia and assisted-living facilities would benefit from a memory care endorsement.

**Source:** Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387; Laws 2016, LB698, § 24.

#### **71-516.03 Terms, defined.**

For purposes of the Alzheimer's Special Care Disclosure Act:

(1) Alzheimer's special care unit means any nursing facility or assisted-living facility, licensed by the department, which secures, segregates, or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease, dementia, or a related disorder and which advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's disease, dementia, or related disorder care services;

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

(3) Memory care endorsement has the same meaning as in section 71-422.01.

**Source:** Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388; Laws 2016, LB698, § 25.

#### **71-516.04 Facility; disclosures required; department; duties.**

(1) Any facility which offers to provide or provides care for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the department and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

(2) The information disclosed shall explain the additional care provided in each of the following areas:

(a) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;

(b) The process and criteria for placement in, transfer to, or discharge from the unit;

(c) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(d) Staff training and continuing education practices which shall include, but not be limited to, four hours annually for direct care staff. Such training shall include topics pertaining to the form of care or treatment set forth in the disclosure described in this section. The requirement in this subdivision shall not be construed to increase the aggregate hourly training requirements of the Alzheimer's special care unit;

(e) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(f) The frequency and types of resident activities;

(g) The involvement of families and the availability of family support programs; and

(h) The costs of care and any additional fees.

(3) In order to qualify for a memory care endorsement, an assisted-living facility making a disclosure under this section shall comply with section 71-472.

**Source:** Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389; Laws 2010, LB849, § 23; Laws 2016, LB698, § 26.

#### **71-517 Memory care endorsement.**

An assisted-living facility which is an Alzheimer's special care unit may apply for a memory care endorsement as provided in the Health Care Facility Licensure Act but shall not advertise itself as an endorsed memory care unit without such endorsement.

**Source:** Laws 2016, LB698, § 27.

#### **Cross References**

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

#### **71-518 Repealed. Laws 1991, LB 10, § 7.**

#### **(c) INHERITED OR CONGENITAL INFANT OR CHILDHOOD-ONSET DISEASES**

#### **71-519 Screening test; duties; disease management; duties; fees authorized; immunity from liability.**

(1) All infants born in the State of Nebraska shall be screened for phenylketonuria, congenital primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, medium-chain acyl co-a dehydrogenase (MCAD) deficiency, X-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoses type 1 (MPS-1), Pompe disease, and such other inherited or congenital infant or childhood-onset diseases as the Department of Health and Human Services may from time to time specify. Confirmatory tests shall be performed if a presumptive positive result on the screening test is obtained.

(2) The attending physician shall collect or cause to be collected the prescribed blood specimen or specimens and shall submit or cause to be submitted the same to the laboratory designated by the department for the performance of such tests within the period and in the manner prescribed by the department. If

a birth is not attended by a physician and the infant does not have a physician, the person registering the birth shall cause such tests to be performed within the period and in the manner prescribed by the department. The laboratory shall within the period and in the manner prescribed by the department perform such tests as are prescribed by the department on the specimen or specimens submitted and report the results of these tests to the physician, if any, the hospital or other birthing facility or other submitter, and the department. The laboratory shall report to the department the results of such tests that are presumptive positive or confirmed positive within the period and in the manner prescribed by the department.

(3) The hospital or other birthing facility shall record the collection of specimens for tests for metabolic diseases and the report of the results of such tests or the absence of such report. For purposes of tracking, monitoring, and referral, the hospital or other birthing facility shall provide from its records, upon the department's request, information about the infant's and mother's location and contact information, and care and treatment of the infant.

(4)(a) The department shall have authority over the use, retention, and disposal of blood specimens and all related information collected in connection with disease testing conducted under subsection (1) of this section.

(b) The department shall adopt and promulgate rules and regulations relating to the retention and disposal of such specimens. The rules and regulations shall: (i) Be consistent with nationally recognized standards for laboratory accreditation and shall comply with all applicable provisions of federal law; (ii) require that the disposal be conducted in the presence of a witness who may be an individual involved in the disposal or any other individual; and (iii) provide for maintenance of a written or electronic record of the disposal, verified by such witness.

(c) The department shall adopt and promulgate rules and regulations relating to the use of such specimens and related information. Such use shall only be made for public health purposes and shall comply with all applicable provisions of federal law. The department may charge a reasonable fee for evaluating proposals relating to the use of such specimens for public health research and for preparing and supplying specimens for research proposals approved by the department.

(5) The department shall prepare written materials explaining the requirements of this section. The department shall include the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1) of this section;

(b) The purpose and value of the infant's parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (6) of this section in a safe place;

(c) The department's procedures for retaining and disposing of blood specimens developed under subsection (4) of this section; and

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section may be used for research pursuant to subsection (4) of this section.

(6) In addition to the requirements of subsection (1) of this section, the attending physician or person registering the birth may offer to draw an additional blood specimen from the infant. If such an offer is made, it shall be made to the infant's parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1) of this section. If the infant's parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques. The attending physician or person making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes and should be kept in a safe place. The attending physician or person making the offer may charge a fee that is not more than the actual cost of obtaining and preserving the additional blood specimen.

(7) The person responsible for causing the tests to be performed under subsection (2) of this section shall inform the parent or legal guardian of the infant of the tests and of the results of the tests and provide, upon any request for further information, at least a copy of the written materials prepared under subsection (5) of this section.

(8) Dietary and therapeutic management of the infant with phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, MCAD deficiency, X-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoses type 1 (MPS-1), Pompe disease, or such other inherited or congenital infant or childhood-onset diseases as the department may from time to time specify shall be the responsibility of the child's parent, guardian, or custodian with the aid of a physician selected by such person.

(9) Except for acts of gross negligence or willful or wanton conduct, any physician, hospital or other birthing facility, laboratory, or other submitter making reports or notifications under sections 71-519 to 71-524 shall be immune from criminal or civil liability of any kind or character based on any statements contained in such reports or notifications.

**Source:** Laws 1987, LB 385, § 1; Laws 1988, LB 1100, § 99; Laws 1996, LB 1044, § 502; Laws 1998, LB 1073, § 85; Laws 2001, LB 432, § 10; Laws 2002, LB 235, § 1; Laws 2003, LB 119, § 2; Laws 2005, LB 301, § 15; Laws 2007, LB296, § 390; Laws 2017, LB91, § 1.

The newborn screening statutes do not violate the free exercise provisions of the Nebraska Constitution. In re Interest of Anaya, 276 Neb. 825, 758 N.W.2d 10 (2008).

A neutral law of general applicability need not be supported by a compelling governmental interest even though it may have an incidental effect of burdening religion. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

The assertion of a hybrid rights constitutional claim does not implicate a strict scrutiny review of a statute. A party may not force the government to meet the strict scrutiny standard by merely asserting claims of violations of more than one constitu-

tional right. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section does not unlawfully burden a parent's right to freely exercise his or her religion, nor does it unlawfully burden parental rights. The Nebraska Supreme Court determines that using a rational basis test for review, this section is constitutional. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section is a neutral law of general applicability. It applies to all babies born in the state and does not discriminate as to which babies must be tested. Its purpose is not directed at religious practices or beliefs. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

### **71-520 Food supplement and treatment services program; authorized; fees.**

The Department of Health and Human Services shall establish a program to provide food supplements and treatment services to individuals suffering from the inherited or congenital infant or childhood-onset diseases set forth in



section 71-519. To defray or help defray the costs of any program which may be established by the department under this section, the department may prescribe and assess a scale of fees for the food supplements. The maximum prescribed fee for food supplements shall be no more than the actual cost of providing such supplements. No fees may be charged for formula, and up to two thousand dollars of pharmaceutically manufactured food supplements shall be available to an individual without fees each year. For purposes of this section, pharmaceutically manufactured foods are chemically synthesized or processed for the treatment of inborn errors in metabolism.

**Source:** Laws 1987, LB 385, § 2; Laws 1996, LB 1044, § 503; Laws 1997, LB 610, § 1; Laws 1998, LB 1073, § 86; Laws 2002, LB 235, § 2; Laws 2005, LB 301, § 16; Laws 2007, LB296, § 391; Laws 2017, LB91, § 2.

#### **71-521 Tests and reports; department; duties.**

The Department of Health and Human Services shall prescribe the tests, the test methods and techniques, and such reports and reporting procedures as are necessary to implement sections 71-519 to 71-524.

**Source:** Laws 1987, LB 385, § 3; Laws 1996, LB 1044, § 504; Laws 2002, LB 235, § 3; Laws 2005, LB 301, § 17; Laws 2007, LB296, § 392.

#### **71-522 Central data registry; department; duties; use of data.**

The Department of Health and Human Services shall establish and maintain a central data registry for the collection and storage of reported data concerning inherited or congenital infant or childhood-onset diseases. The department shall use reported data to ensure that all infants born in the State of Nebraska are tested for diseases set forth in section 71-519 or by rule and regulation. The department shall also use reported data to evaluate the quality of the statewide system of newborn screening and develop procedures for quality assurance. Reported data in anonymous or statistical form may be made available by the department for purposes of research.

**Source:** Laws 1987, LB 385, § 4; Laws 1996, LB 1044, § 505; Laws 1998, LB 1073, § 87; Laws 2002, LB 235, § 4; Laws 2005, LB 301, § 18; Laws 2007, LB296, § 393; Laws 2017, LB91, § 3.

#### **71-523 Departments; powers and duties; adopt rules and regulations; contracting laboratories; requirements; fees.**

(1) The Department of Health and Human Services shall provide educational and resource services regarding screened diseases to persons affected by sections 71-519 to 71-524 and to the public generally.

(2) The Department of Health and Human Services may apply for, receive, and administer assessed fees and federal or other funds which are available for the purpose of implementing sections 71-519 to 71-524 and may contract for or provide services as may be necessary to implement such sections.

(3) The Department of Health and Human Services shall adopt and promulgate rules and regulations to implement sections 71-519 to 71-524.

(4) The Department of Health and Human Services shall contract, following competitive bidding, with a single laboratory to perform tests, report results, set forth the fee the laboratory will charge for testing, and collect and submit fees

pursuant to sections 71-519 to 71-524. The department shall require the contracting laboratory to: (a) Perform testing for all of the diseases pursuant to section 71-519 and in accordance with rules and regulations adopted and promulgated pursuant to this section, (b) maintain certification under the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a, as such act and section existed on July 20, 2002, (c) participate in appropriate quality assurance proficiency testing programs offered by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services or other professional laboratory organization, as determined by the Department of Health and Human Services, (d) maintain sufficient contingency arrangements to ensure testing delays of no longer than twenty-four hours in the event of natural disaster or laboratory equipment failure, and (e) charge to the hospital, other birthing facility, or other submitter the fee provided in the contract for laboratory testing costs and the administration fee specified in subsection (5) of this section. The administration fee collected pursuant to such subsection shall be remitted to the Department of Health and Human Services.

(5) The Department of Health and Human Services shall set an administration fee of not more than twenty dollars. The department may use the administration fee to pay for the costs of the central data registry, tracking, monitoring, referral, quality assurance, program operation, program development, program evaluation, and treatment services authorized under sections 71-519 to 71-523. The fee shall be collected by the contracting laboratory as provided in subdivision (4)(e) of this section.

(6) Fees collected for the department pursuant to sections 71-519 to 71-523 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

**Source:** Laws 1987, LB 385, § 5; Laws 1996, LB 1044, § 506; Laws 1997, LB 610, § 2; Laws 1998, LB 1073, § 88; Laws 2002, LB 235, § 5; Laws 2005, LB 301, § 19; Laws 2007, LB296, § 394; Laws 2017, LB91, § 4.

#### **71-524 Enforcement; procedure.**

In addition to any other remedies which may be available by law, a civil proceeding to enforce section 71-519 may be brought in the district court of the county where the infant is domiciled or found. The attending physician, the hospital or other birthing facility, the Attorney General, or the county attorney of the county where the infant is domiciled or found may institute such proceedings as are necessary to enforce such section. It shall be the duty of the Attorney General or the county attorney to whom the Department of Health and Human Services reports a violation to cause appropriate proceedings to be initiated without delay. A hearing on any action brought pursuant to this section shall be held within seventy-two hours of the filing of such action, and a decision shall be rendered by the court within twenty-four hours of the close of the hearing.

**Source:** Laws 1987, LB 385, § 6; Laws 1996, LB 1044, § 507; Laws 2002, LB 235, § 6; Laws 2007, LB296, § 395.

By its terms, in addition to the specific and therefore preferred remedy in district court, this section states that the newborn screening statutes may also be enforced through "other remedies which may be available by law." Under the proper

set of proven facts, enforcement through the neglect provisions of the juvenile code may be one such "other remedy." In re Interest of Anaya, 276 Neb. 825, 758 N.W.2d 10 (2008).

## (d) CERVICAL CANCER

**71-525 Repealed. Laws 1993, LB 536, § 128.**

## (e) IMMUNIZATION AND VACCINES

**71-526 Act, how cited.**

Sections 71-526 to 71-530 shall be known and may be cited as the Childhood Vaccine Act.

**Source:** Laws 1992, LB 431, § 1.

**71-527 Legislative findings and declarations.**

The Legislature hereby finds and declares that:

(1) Childhood communicable diseases constitute a serious threat to the public health of the people of this state and the prevention of childhood communicable diseases is a goal of the people;

(2) The effectiveness of childhood vaccines in preventing certain communicable diseases and thereby saving lives and preventing debilitating conditions has been well documented. Vaccines are among the most cost-effective components of preventive health care; for every dollar spent on childhood immunization, ten dollars are saved in later medical costs;

(3) Prevention of childhood diseases should include comprehensive, continuous health care, including regular medical examinations, treatment by a practitioner familiar with the child, and age-appropriate administration of immunizations;

(4) The United States Department of Health and Human Services, Public Health Service, has as its Healthy People 2000 objective to have at least ninety percent of all children completely immunized by age two. The United States immunization survey indicates that only seventy-seven percent of children two years of age had received the basic immunization series. Recent outbreaks of measles among preschoolers who are not immunized also have shown that inadequate immunization levels still occur;

(5) Nebraska has as its Year 2000 objective that seventy-five percent of its counties are covered by public immunization clinics, that ninety percent of its two-year-olds are minimally immunized, and that ninety-eight percent of its school-aged children are immunized;

(6) The Surgeon General's 1990 objective to decrease the incidence of cases of mumps and pertussis to less than one thousand has not been achieved, and the incidence of pertussis increased between 1979 and 1987;

(7) Immunization rates in other developed countries are higher than immunization rates in the United States;

(8) Diphtheria, tetanus, and pertussis immunization rates in European countries average forty-one percent higher than in the United States;

(9) Polio immunization rates are twenty-three percent higher in European countries than in the United States;

(10) Measles immunization rates are twenty-three percent higher in England, Denmark, and Norway than in the United States;

(11) Childhood communicable diseases should be prevented through protection of Nebraska's children by immunization against measles, mumps, rubella, diphtheria, tetanus, pertussis, polio, haemophilus influenzae type B, and such other diseases as may be indicated based on then current medical and scientific knowledge;

(12) The average cost of fully vaccinating a child in the private sector has increased dramatically in the past decade. The full battery of childhood vaccines recommended by the Centers for Disease Control and Prevention in 1982 increased five times in cost between 1982 and 1989. These increases have made it unaffordable for many children to receive their immunizations at their private practitioner's office; and

(13) There is a national effort to continue current immunization programs and to provide additional funds to implement the Healthy People 2000 objective that ninety percent of children are appropriately immunized by two years of age.

**Source:** Laws 1992, LB 431, § 2; Laws 1994, LB 1223, § 30.

#### **71-528 Intent and purpose.**

(1) It is the intent of the Legislature that the citizens of the State of Nebraska benefit by participation in national efforts to take innovative action to provide immunization of our children by removal of barriers which impede vaccine delivery and by improving access to immunization services.

(2) It is also the purpose of the Childhood Vaccine Act to provide authorization for childhood immunization programs and demonstration or pilot projects that document childhood immunization trends, encourage cooperation between and use of both private practitioners and public providers in offering health care to children, and otherwise assess a total approach to immunization against childhood diseases.

**Source:** Laws 1992, LB 431, § 3; Laws 1994, LB 1223, § 31.

#### **71-529 Statewide immunization action plan; department; powers.**

The Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide immunization action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately immunized;

(2) Apply for and receive public and private awards to purchase vaccines and to administer a statewide comprehensive program;

(3) Provide immunization information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness and demand for immunization by parents;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize well-child care and the use of private practitioners and which improve the availability

ty of immunization and improve management of immunization delivery so as to ensure the adequacy of the vaccine delivery system;

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska. The report submitted to the Legislature shall be submitted electronically;

(6) Recognize persons who volunteer their efforts towards achieving the goal of providing immunization of the children of Nebraska and in meeting the Healthy People 2000 objective of series-complete immunization coverage for ninety percent or more of United States children by their second birthday;

(7) Establish a statewide program to immunize Nebraska children from birth up to six years of age against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B, and haemophilus influenzae type B. The program shall serve children who are not otherwise eligible for childhood immunization coverage with medicaid or other federal funds or are not covered by private third-party payment; and

(8) Contract to provide vaccine under the statewide program authorized under subdivision (7) of this section without cost to health care providers subject to the following conditions:

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

(b) Health care providers shall administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention or by the American Academy of Pediatrics unless in the provider's medical judgment, subject to accepted medical practice, such compliance is medically inappropriate; and

(c) Health care providers shall maintain records on immunizations as prescribed by this section for inspection and audit by the Department of Health and Human Services or the Auditor of Public Accounts, including responses by parents or guardians to simple screening questions related to payment coverage by public or private third-party payors, identification of the administration fee as separate from any other cost charged for other services provided at the same time the vaccination service is provided, and other information as determined by the department to be necessary to comply with subdivision (5) of this section. Such immunization records may also be used for information exchange as provided in sections 71-539 to 71-544.

**Source:** Laws 1992, LB 431, § 4; Laws 1994, LB 1223, § 32; Laws 1996, LB 1044, § 508; Laws 1998, LB 1063, § 17; Laws 2005, LB 301, § 20; Laws 2007, LB296, § 396; Laws 2011, LB591, § 5; Laws 2012, LB782, § 103.

**71-530 Act; entitlement not created; availability of funds; effect.**

The Childhood Vaccine Act is not intended to create an entitlement to any activities described in the act, and the Department of Health and Human Services may perform the activities described in the act to the extent funds are available.

**Source:** Laws 1992, LB 431, § 5; Laws 1996, LB 1044, § 509.

## (f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

**71-531 Test; anonymous testing; referral for treatment; person committed to the Department of Correctional Services; department; duties.**

(1) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. If an anonymous test is requested, a health care provider shall confidentially refer such person to a site which provides anonymous testing.

(2) When a health care provider or a health facility performs a human immunodeficiency virus test and the result is positive, the person being tested shall be referred for posttest treatment.

(3) When a human immunodeficiency virus test is performed by licensed medical personnel of the Department of Correctional Services on an individual committed to such department, the person committed to the department shall be informed by the department (a) if he or she is being tested for the human immunodeficiency virus, (b) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (c) of the test result and the meaning of such result. Posttest counseling shall be required for the subject of the test if such test is positive.

**Source:** Laws 1994, LB 819, § 5; Laws 1997, LB 194, § 1; Laws 2009, LB288, § 33; Laws 2010, LB1036, § 35; Laws 2018, LB285, § 2. Effective date July 19, 2018.

**71-532 Test results reportable; manner.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations which make the human immunodeficiency virus infection reportable by name in the same manner as communicable diseases under section 71-502.

**Source:** Laws 1994, LB 819, § 6; Laws 1996, LB 1044, § 510; Laws 2007, LB296, § 397.

## (g) INFECTED HEALTH CARE WORKERS

**71-533 Repealed. Laws 2002, LB 93, § 27.**

**71-534 Repealed. Laws 2002, LB 93, § 27.**

**71-535 Repealed. Laws 2002, LB 93, § 27.**

**71-536 Repealed. Laws 2002, LB 93, § 27.**

**71-537 Repealed. Laws 2002, LB 93, § 27.**

**71-538 Repealed. Laws 2002, LB 93, § 27.****(h) EXCHANGE OF IMMUNIZATION INFORMATION****71-539 Legislative intent.**

It is the intent of the Legislature that sections 71-539 to 71-544 provide for the exchange of immunization information between health care professionals, health care facilities, health care services, schools, postsecondary educational institutions, licensed child care facilities, electronic health-record systems, public health departments, health departments of other states, Indian health services, and tribes for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of vaccine-preventable diseases.

**Source:** Laws 1998, LB 1063, § 11; Laws 2011, LB591, § 6.

**71-540 Immunization information; nondisclosure.**

All immunization information may be shared with the Department of Health and Human Services and entered into the central data base created pursuant to section 71-541.01. A patient or, if the patient is a minor, the patient's parent or legal guardian may deny access under sections 71-539 to 71-544 to the patient's immunization information by signing a nondisclosure form with the professional or entity which provided the immunization and with the department. The nondisclosure form shall be kept with the immunization information of the patient, and such immunization information is considered restricted immunization information.

**Source:** Laws 1998, LB 1063, § 12; Laws 2011, LB591, § 8.

**71-541 Immunization information system; immunization information; access; fee.**

Any person or entity authorized under section 71-541.01 to access immunization information in the immunization information system established pursuant to section 71-541.01 may access such information pursuant to rules and regulations of the Department of Health and Human Services for purposes of direct patient care, public health activities, or enrollment in school or child care services. The unrestricted immunization information shared may include, but is not limited to, the patient's name and date of birth, the dates and vaccine types administered, and any immunization information obtained from other sources. A person or entity listed in section 71-539 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution may charge a reasonable fee to recover the cost of providing such immunization information.

**Source:** Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398; Laws 2011, LB591, § 9.

**71-541.01 Immunization information system; established; purpose; access to records authorized.**

The Department of Health and Human Services shall establish an immunization information system for the purpose of providing a central data base of immunization information which can be accessed pursuant to rules and regula-

tions of the department by any person or entity listed in section 71-539, by a patient, and by a patient's parent or legal guardian if the patient is a minor or under guardianship. In order to facilitate operation of the immunization information system, the department shall provide the system with access to all records of the department, including, but not limited to, vital records.

**Source:** Laws 2011, LB591, § 7.

**71-542 Immunization information system; immunization information; confidentiality; violation; penalty.**

Immunization information in the immunization information system established pursuant to section 71-541.01 is confidential, and unrestricted immunization information may only be accessed pursuant to rules and regulations of the Department of Health and Human Services. Unauthorized public disclosure of such confidential information is a Class III misdemeanor.

**Source:** Laws 1998, LB 1063, § 14; Laws 2004, LB 1005, § 54; Laws 2011, LB591, § 10.

**71-543 Rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to implement sections 71-539 to 71-544, including procedures and methods for and limitations on access to and security and confidentiality of the immunization information.

**Source:** Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399; Laws 2011, LB591, § 11.

**71-544 Immunity.**

Any person who receives or releases immunization information in the form and manner prescribed in sections 71-539 to 71-544 and any rules and regulations which may be adopted and promulgated pursuant to sections 71-539 to 71-544 is not civilly or criminally liable for such receipt or release.

**Source:** Laws 1998, LB 1063, § 16; Laws 2011, LB591, § 12.

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

**71-545 Repealed. Laws 2008, LB 928, § 47.**

**71-546 Repealed. Laws 2008, LB 928, § 47.**

**71-547 Repealed. Laws 2008, LB 928, § 47.**

**71-548 Repealed. Laws 2008, LB 928, § 47.**

**71-549 Repealed. Laws 2008, LB 928, § 47.**

**71-550 Repealed. Laws 2008, LB 928, § 47.**

(j) GENETIC TESTS

**71-551 Physician; genetic tests; written informed consent; requirements; Department of Health and Human Services; duty.**

(1) Except as provided in section 71-519 and except for newborn screening tests ordered by physicians to comply with the law of the state in which the



infant was born, a physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function shall not order a predictive genetic test without first obtaining the written informed consent of the patient to be tested. Written informed consent consists of a signed writing executed by the patient or the representative of a patient lacking decisional capacity that confirms that the physician or individual acting under the delegated authority of the physician has explained, and the patient or his or her representative understands:

- (a) The nature and purpose of the predictive genetic test;
- (b) The effectiveness and limitations of the predictive genetic test;
- (c) The implications of taking the predictive genetic test, including the medical risks and benefits;
- (d) The future uses of the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test;
- (e) The meaning of the predictive genetic test results and the procedure for providing notice of the results to the patient; and
- (f) Who will have access to the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test, and the patient's right to confidential treatment of the sample and the genetic information.

(2) The Department of Health and Human Services shall develop and distribute a model informed consent form for purposes of this section. The department shall include in the model form all of the information required under subsection (1) of this section. The department shall distribute the model form and all revisions to the form to physicians and other individuals subject to this section upon request and at no charge. The department shall review the model form at least annually for five years after the first model form is distributed and shall revise the model form if necessary to make the form reflect the latest developments in medical genetics. The department may also develop and distribute a pamphlet that provides further explanation of the information included in the model form.

(3) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the physician or individual acting under the delegated authority of the physician shall give the patient a copy of the signed informed consent form and shall include the original signed informed consent form in the patient's medical record.

(4) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the patient is barred from subsequently bringing a civil action for damages against the physician, or an individual to whom the physician delegated authority to perform a selected act, task, or function, who ordered the predictive genetic test, based upon failure to obtain informed consent for the predictive genetic test.

(5) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a physician reasonably well-qualified to order and interpret the predictive genetic test would know. A person acting under the delegated authority of a physician shall understand and be qualified to provide the information required by subsection (1) of this section.

(6) For purposes of this section:

(a) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test;

(b) Genetic test means the analysis of human DNA, RNA, chromosomes, epigenetic status, and those tissues, proteins, and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. Tests of tissues, proteins, and metabolites are included only when generally accepted in the scientific and medical communities as being specifically determinative of a heritable or somatic disease-related genetic condition. Genetic test does not include a routine analysis, including a chemical analysis, of body fluids or tissues unless conducted specifically to determine a heritable or somatic disease-related genetic condition. Genetic test does not include a physical examination or imaging study. Genetic test does not include a procedure performed as a component of biomedical research that is conducted pursuant to federal common rule under 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46, as such regulations existed on January 1, 2003; and

(c) Predictive genetic test means a genetic test for an otherwise undetectable genotype or karyotype relating to the risk for developing a genetically related disease or disability, the results of which can be used to substitute a patient's prior risk based on population data or family history with a risk based on genotype or karyotype. Predictive genetic test does not include diagnostic testing conducted on a person exhibiting clinical signs or symptoms of a possible genetic condition. Predictive genetic testing does not include prenatal genetic diagnosis, unless the prenatal testing is conducted for an adult-onset condition not expected to cause clinical signs or symptoms before the age of majority.

**Source:** Laws 2001, LB 432, § 1; Laws 2003, LB 119, § 1; Laws 2005, LB 301, § 10; Laws 2006, LB 994, § 85; R.S.Supp., 2006, § 71-1,104.01; Laws 2007, LB296, § 333; Laws 2007, LB463, § 1183.

#### (k) SYNDROMIC SURVEILLANCE PROGRAM

**71-552 Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.**

(1) For purposes of protecting the public health and tracking the impact of disease prevention strategies intended to lower the cost of health care, the Department of Health and Human Services shall develop a syndromic surveillance program that respects patient privacy and benefits from advances in both electronic health records and electronic health information exchange. The syndromic surveillance program shall include the monitoring, detection, and investigation of public health threats from (a) intentional or accidental use or misuse of chemical, biological, radiological, or nuclear agents, (b) clusters or outbreaks of infectious or communicable diseases, and (c) noninfectious causes of illness.

(2) The department shall adopt and promulgate rules and regulations setting standards for syndromic surveillance reporting by hospitals. The standards shall specify (a) the syndromic surveillance data elements required to be reported for all encounters, which shall include at a minimum the date of the

encounter and the patient's gender, date of birth, chief complaint or reason for encounter, home zip code, unique record identifier, and discharge diagnoses and (b) the manner of reporting.

(3) The department may require, by rule and regulation, syndromic surveillance reporting by other health care facilities or any person issued a credential by the department.

(4) The department shall establish, by rule and regulation, a schedule for the implementation of full electronic reporting of all syndromic surveillance data elements. The schedule shall take into consideration the number of data elements already reported by the facility or person, the capacity of the facility or person to electronically report the remaining elements, the funding available for implementation, and other relevant factors, including improved efficiencies and resulting benefits to the reporting facility or person.

(5) The use, confidentiality, and immunity provisions of section 71-503.01 apply to syndromic surveillance data reports.

(6) Failure to provide a report under this section or the rules and regulations is grounds for discipline of a credential issued by the department.

**Source:** Laws 2011, LB591, § 1.

#### (I) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

##### **71-553 Act, how cited.**

Sections 71-553 to 71-557 shall be known and may be cited as the Newborn Critical Congenital Heart Disease Screening Act.

**Source:** Laws 2013, LB225, § 1.

##### **71-554 Legislative findings.**

The Legislature finds that:

- (1) Critical congenital heart disease is among the most common birth defects;
- (2) Critical congenital heart disease is the leading cause of death for infants born with a birth defect;
- (3) A major cause of infant mortality as a result of critical congenital heart disease is that a significant number of newborns affected are not diagnosed in the newborn nursery as having critical congenital heart disease; and
- (4) An effective mechanism for critical congenital heart disease screening of newborns can reduce infant mortality.

**Source:** Laws 2013, LB225, § 2.

##### **71-555 Terms, defined.**

For purposes of the Newborn Critical Congenital Heart Disease Screening Act:

- (1) Birthing facility means a hospital or other health care facility in this state which provides birthing and newborn care services;
- (2) Critical congenital heart disease screening means a testing procedure or procedures intended to detect hypoplastic left heart syndrome, pulmonary

atresia, tetralogy of Fallot, total anomalous pulmonary venous return, transposition of the great arteries, tricuspid atresia, and truncus arteriosus;

- (3) Department means the Department of Health and Human Services;
- (4) Newborn means a child from birth through twenty-nine days old; and
- (5) Parent means a natural parent, a stepparent, an adoptive parent, a legal guardian, or any other legal custodian of a child.

**Source:** Laws 2013, LB225, § 3.

**71-556 Newborn; critical congenital heart disease screening; responsibilities.**

(1) All newborns in this state shall undergo critical congenital heart disease screening in accordance with standards determined in rules and regulations adopted and promulgated by the department.

(2) For deliveries in a birthing facility, the birthing facility shall develop and implement policies to cause the screening of the newborn and the reporting of the results to the newborn's health care provider in accordance with standards adopted pursuant to subsection (1) of this section.

(3) For deliveries that are planned outside of a birthing facility, the prenatal care provider shall inform the parent of the importance of critical congenital heart disease screening and the requirement for all newborns to be screened. The parent shall be responsible for causing the screening to be performed within the period and in the manner prescribed by the department.

(4) For a birth that does not take place in a birthing facility, whether or not there is a prenatal care provider, and the newborn is not admitted to a birthing facility, the person registering such birth shall be responsible for obtaining critical congenital heart disease screening for the newborn within the period and in the manner prescribed by the department.

**Source:** Laws 2013, LB225, § 4.

**71-557 Department; duties; rules and regulations.**

The department shall:

(1) In consultation with a panel of persons having expertise in the field of critical congenital heart disease screening, develop approved methods of critical congenital heart disease screening;

(2) Apply for all available federal funding to carry out the Newborn Critical Congenital Heart Disease Screening Act; and

(3) Adopt and promulgate rules and regulations necessary to implement the act.

**Source:** Laws 2013, LB225, § 5.

**ARTICLE 6  
VITAL STATISTICS**

**Cross References**

**Abortion reporting form**, see section 28-343.

**Adopted persons**, information and forms, see section 43-124 et seq.

**Child laborer's employment certificate**, birth certificate as evidence of age, see section 48-304.

**Cities of the metropolitan class**, regulate registration of births and deaths, see section 14-102.

**Driver's license**, birth certificate as evidence of age, identity, and status, see sections 60-484, 60-484.04, and 60-4,144.

**Health occupations and professions**, birth certificate as evidence of age, see section 38-3122.

**Human skeletal remains or burial goods**, see section 28-1301.

**Maternal and child health**, reports to Chief of the Children's Bureau, United States Department of Labor, see section 71-2208.

## VITAL STATISTICS

**Medically handicapped children**, reports of birth, see section 71-1405.

**Missing Children Identification Act**, see section 43-2001.

**Physicians**, required to comply, see section 38-2037.

**Retirement systems**, birth certificate as evidence of age, see sections 23-2312, 24-704, 79-906, 81-2021, and 84-1305.01.

**State identification card**, birth certificate as evidence of age, identity, and status, see sections 60-484 and 60-484.04.

### Section

- 71-601. Act, how cited.
- 71-601.01. Terms, defined.
- 71-602. Department; standard forms; release of information; confidentiality.
- 71-602.01. Release of information; written agreements authorized.
- 71-603. Vital statistics; duties of department; rules and regulations.
- 71-603.01. Electronic signatures; department; duty.
- 71-604. Birth certificate; preparation and filing.
- 71-604.01. Birth certificate; sex reassignment; new certificate; procedure.
- 71-604.02. Repealed. Laws 1979, LB 39, § 3.
- 71-604.03. Repealed. Laws 1987, LB 385, § 7.
- 71-604.04. Repealed. Laws 1987, LB 385, § 7.
- 71-604.05. Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.
- 71-605. Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements; department; deceased applied for or received medical assistance; duties; report.
- 71-605.01. Death certificate; death in military service outside continental limits of United States; recording.
- 71-605.02. Death certificate; death in military service outside continental limits of United States; fees.
- 71-605.03. Repealed. Laws 1985, LB 42, § 26.
- 71-605.04. Death; autopsy; sudden infant death syndrome; report by county attorney or coroner; to whom.
- 71-606. Stillborn child; death certificate; how registered; duties; certificate of birth resulting in stillbirth.
- 71-607. Nonviable birth; commemorative certificate; department; duties; fee.
- 71-608. Repealed. Laws 1985, LB 42, § 26.
- 71-608.01. Birth and death certificates; local registration; where filed; exemption.
- 71-609. Caskets; sale by retail dealer; record; report.
- 71-610. Maternity homes; hospitals; birth reports.
- 71-611. Department; forms; duty to supply; use of computer-generated forms; authorized.
- 71-612. Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.
- 71-613. Violation; penalty.
- 71-614. Marriage licenses; monthly reports; county clerk; duties; failure; penalty.
- 71-615. Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.
- 71-616. Reports; department to tabulate.
- 71-616.01. Match birth and death certificates; viewing records; department; powers.
- 71-616.02. Filing and registering of information; additional methods authorized.
- 71-616.03. Filing and issuing vital records; additional methods authorized.
- 71-616.04. Preservation of vital records; methods authorized.
- 71-616.05. Repealed. Laws 2004, LB 1005, § 143.
- 71-617. Repealed. Laws 1985, LB 42, § 27.
- 71-617.01. Delayed Birth Registration Act, how cited.
- 71-617.02. Delayed birth registration; application; fee; certificate registered; documentary evidence, defined.
- 71-617.03. Delayed birth certificate; contents.
- 71-617.04. Delayed birth certificate; persons applying.
- 71-617.05. Delayed birth certificate; application; fee; records required.
- 71-617.06. Delayed birth certificate; independent supporting records; enumerated.
- 71-617.07. Refusal to issue delayed birth certificate; reasons; appeal.
- 71-617.08. Delayed birth certificate; denial; appeal; procedure.
- 71-617.09. Delayed birth certificate; petition; accompanying documents.

## Section

- 71-617.10. Delayed birth certificate; hearing; notice; witnesses.
- 71-617.11. Delayed birth certificate; hearing; findings; order; contents.
- 71-617.12. Delayed birth certificate; court order; clerk of the court; duties.
- 71-617.13. Delayed birth certificate; department; duties.
- 71-617.14. Repealed. Laws 2004, LB 1005, § 143.
- 71-617.15. Delayed birth certificate; fees.
- 71-618. Repealed. Laws 1985, LB 42, § 27.
- 71-619. Repealed. Laws 1985, LB 42, § 27.
- 71-620. Repealed. Laws 1985, LB 42, § 27.
- 71-621. Repealed. Laws 1985, LB 42, § 27.
- 71-622. Repealed. Laws 1985, LB 42, § 27.
- 71-623. Repealed. Laws 1985, LB 42, § 27.
- 71-624. Repealed. Laws 1985, LB 42, § 27.
- 71-625. Repealed. Laws 1985, LB 42, § 27.
- 71-626. Adoptive birth certificate; adoption decree; court; report of adoption; contents.
- 71-626.01. Adopted person; new birth certificate; conditions; contents; rules and regulations.
- 71-627. Adoptive birth certificates; filing; copies; issuance.
- 71-627.01. Adoptive birth certificate; decree of adoption of child born in another state; notice of entry of decree.
- 71-627.02. Adoption of foreign-born person; birth certificate; contents.
- 71-628. Children born out of wedlock; birth certificate; issuance; when authorized.
- 71-629. Children born out of wedlock; legitimized; birth certificate; copies; issuance; inspection; when authorized.
- 71-630. Birth or death certificate; erroneous or incomplete; correction; department; duties.
- 71-631. Repealed. Laws 1971, LB 245, § 13.
- 71-632. Repealed. Laws 1971, LB 245, § 13.
- 71-633. Repealed. Laws 1971, LB 245, § 13.
- 71-634. Birth or death certificate; correction.
- 71-635. Birth or death certificate; amendments; application; by whom made.
- 71-636. Birth certificates; amendments.
- 71-637. Birth or death certificates; amendment; evidence required.
- 71-638. Birth or death certificates; application for amendment; made one year after date; evidence required.
- 71-639. Birth or death certificate; amendments; evaluation of evidence.
- 71-640. Birth certificates; given names; change; procedure.
- 71-640.01. Birth certificates; identification of father.
- 71-640.02. Children born out of wedlock; birth certificate; enter name of father; when.
- 71-640.03. Birth certificate; surname of child.
- 71-640.04. Birth certificate; name of father changed; when.
- 71-641. Birth certificates; without given name; legal change of name; procedure.
- 71-642. Birth or death certificates; medical certification; amendment; requirements.
- 71-643. Birth or death certificate; additional amendment; requirements.
- 71-644. Birth or death certificate; amendment; requirements.
- 71-645. Birth defects; findings and duties.
- 71-646. Birth defects; registry; purpose; information released.
- 71-647. Birth defects; department; powers and duties; information released.
- 71-648. Birth defects; reports.
- 71-649. Vital statistics; unlawful acts; enumerated; violations; penalties; warning statement.

**71-601 Act, how cited.**

Sections 71-601 to 71-649 shall be known and may be cited as the Vital Statistics Act.

**Source:** Laws 2005, LB 301, § 21; Laws 2018, LB1040, § 1.  
Effective date July 19, 2018.

**71-601.01 Terms, defined.**

For purposes of the Vital Statistics Act:

(1) Abstract of marriage means a certified document that summarizes the facts of marriage, including, but not limited to, the name of the bride and groom, the date of the marriage, the place of the marriage, and the name of the office filing the original marriage license. An abstract of marriage does not include signatures;

(2) Certificate means the record of a vital event. Certificate does not include a commemorative certificate;

(3) Certification means the process of recording, filing, amending, or preserving a certificate, which process may be by any means, including, but not limited to, microfilm, electronic, imaging, photographic, typewritten, or other means designated by the department;

(4) Commemorative certificate means a document commemorating a nonviable birth;

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

(6) Nonviable birth means an unintentional, spontaneous fetal demise occurring prior to the twentieth week of gestation during a pregnancy that has been verified by a health care practitioner.

**Source:** Laws 1994, LB 886, § 2; Laws 1996, LB 1044, § 512; Laws 2005, LB 301, § 24; Laws 2006, LB 1115, § 38; Laws 2007, LB296, § 400; Laws 2018, LB1040, § 2.  
Effective date July 19, 2018.

**71-602 Department; standard forms; release of information; confidentiality.**

(1) The department shall adopt and promulgate rules and regulations prescribing all standard forms for registering with or reporting to the department and for certification to the public of any birth, abortion, marriage, annulment, dissolution of marriage, or death registered in Nebraska. Such forms shall (a) provide for the registration of vital events as accurately as possible, (b) secure information about the economic, educational, occupational, and sociological backgrounds of the individuals involved in the registered events and their parents as a basis for statistical research in order to reduce morbidity and mortality and improve the quality of life, (c) accomplish such duties in a manner which will be uniform with forms for reporting similar events which have been established by the United States Public Health Service to the extent such forms are consistent with state law, and (d) permit other deviations from such forms as will reduce the costs of gathering information, increase efficiency, or protect the health and safety of the people of Nebraska without jeopardizing such uniformity.

(2) All information designated by the department on all certificates as being for health data and statistical research shall be confidential and may be released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the department in accordance with its rules and regulations. The department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual

cannot be ascertained. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

**Source:** Laws 1989, LB 344, § 1; Laws 1992, LB 1019, § 47; Laws 1993, LB 536, § 60; Laws 1996, LB 1044, § 513; Laws 2007, LB296, § 401.

#### **71-602.01 Release of information; written agreements authorized.**

All information designated by the department on all certificates as being for health data and statistical research shall be confidential but may be released to the department for research and statistical purposes. The department may release cost, health, and associated health risk information from medicaid records to the department for research and statistical purposes. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

**Source:** Laws 1993, LB 536, § 61; Laws 1996, LB 1044, § 514; Laws 2007, LB296, § 402.

#### **71-603 Vital statistics; duties of department; rules and regulations.**

The department shall provide for the registration of vital events and shall adopt, promulgate, and enforce such rules and regulations as are necessary to carry out the purposes of the Vital Statistics Act.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 1, p. 781; C.S.1922, § 8228; Laws 1927, c. 166, § 1, p. 448; C.S.1929, § 71-2401; R.S.1943, § 71-601; Laws 1965, c. 418, § 1, p. 1335; Laws 1991, LB 703, § 27; Laws 1994, LB 886, § 1; Laws 1996, LB 1044, § 511; R.S.1943, (2003), § 71-601; Laws 2005, LB 301, § 23.

#### **71-603.01 Electronic signatures; department; duty.**

The department shall provide for an electronic means of receiving electronic signatures as provided in section 86-611 for purposes of filing and amending death and fetal death certificates under the Vital Statistics Act.

**Source:** Laws 2005, LB 301, § 22.

#### **71-604 Birth certificate; preparation and filing.**

(1) A certificate for each live birth which occurs in the State of Nebraska shall be filed on a standard Nebraska certificate form. Such certificate shall be filed with the department within five business days after the birth.

(2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate which shall include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician, physician assistant, or other person in attendance shall provide the medical information required for the certificate within seventy-two hours after the birth.



(3) When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following:

- (a) The physician or physician assistant in attendance at or immediately after the birth;
- (b) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
- (c) Any other person in attendance at or immediately after the birth.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 5, p. 781; Laws 1921, c. 253, § 1, p. 863; C.S.1922, § 8232; Laws 1927, c. 166, § 2, p. 448; C.S.1929, § 71-2404; R.S.1943, § 71-604; Laws 1965, c. 418, § 2, p. 1335; Laws 1985, LB 42, § 2; Laws 1989, LB 344, § 9; Laws 1994, LB 886, § 3; Laws 1997, LB 307, § 135; Laws 2007, LB296, § 403; Laws 2009, LB195, § 67.

In the light of the legislative history of laws pertaining to osteopathy the term physician, used in this section, was intended to include regularly licensed osteopathic physicians. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

**71-604.01 Birth certificate; sex reassignment; new certificate; procedure.**

Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

**Source:** Laws 1994, LB 886, § 4; Laws 1996, LB 1044, § 515; Laws 2007, LB296, § 404.

**71-604.02 Repealed. Laws 1979, LB 39, § 3.**

**71-604.03 Repealed. Laws 1987, LB 385, § 7.**

**71-604.04 Repealed. Laws 1987, LB 385, § 7.**

**71-604.05 Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.**

(1) The department shall not file (a) a certificate of live birth, (b) a certificate of delayed birth registration for a registrant who is under twenty-five years of age when an application for such certificate is filed, (c) a certificate of live birth filed after adoption of a Nebraska-born person who is under twenty-five years of age or a person born outside of the jurisdiction of the United States, or (d) a certificate of live birth issued pursuant to section 71-628 unless the social security number or numbers issued to the parents are furnished by the person seeking to register the birth. No such certificate may be amended to show paternity unless the social security number of the father is furnished by the person requesting the amendment. The social security number shall not be required if no social security number has been issued to the parent or if the social security number is unknown.

(2) Social security numbers (a) shall be recorded on the birth certificate but shall not be considered part of the birth certificate and (b) shall only be used for the purpose of enforcement of child support orders in Nebraska as permitted by

Title IV-D of the federal Social Security Act, as amended, or as permitted by section 7(a) of the federal Privacy Act of 1974, as amended.

(3) The department may release data to the Social Security Administration which is necessary to obtain a social security number and which is contained on the birth certificate of any individual who has applied for or is receiving medicaid or Supplemental Nutrition Assistance Program benefits. The department shall make such data available only for the purpose of obtaining a social security number for the individual.

(4) The department shall provide to the Social Security Administration each parent's name and social security number collected in the birth certification process as required by the federal Taxpayer Relief Act of 1997.

**Source:** Laws 1991, LB 703, § 28; Laws 1993, LB 536, § 62; Laws 1996, LB 1044, § 516; Laws 1997, LB 307, § 136; Laws 1998, LB 1073, § 89; Laws 2004, LB 1005, § 55; Laws 2007, LB296, § 405; Laws 2009, LB288, § 34.

**71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements; department; deceased applied for or received medical assistance; duties; report.**

(1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician, physician assistant, or nurse practitioner who last attended the deceased. The standard form shall also include the deceased's social security number and a notice that, pursuant to section 30-2413, demands for notice which may affect the estate of the deceased are filed with the county court in the county where the decedent resided at the time of death. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians, physician assistants, or nurse practitioners for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician, physician assistant, or nurse practitioner shall have the responsibility and duty to complete and sign by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician, physician assistant, or nurse practitioner was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, nurse practitioner, community health official, or county coroner within forty-eight hours. The term sudden infant

death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible. Within ten days after the filing of the certificate of death and prior to the issuance of any certified copies of the certificate of death, the department shall search its records to determine if the deceased had applied for or received medical assistance under the Medical Assistance Act. If the deceased made such application or received such assistance, the department shall, before or contemporaneously with the issuance of the first certified copy of the certificate of death, file a demand for notice pursuant to section 30-2413 in the county court of the county in which the decedent was domiciled at the time of death. The department shall annually report the following to the Legislature:

- (a) The number of demands for notice filed pursuant to this section; and
- (b) The number of times in the prior year that the time between a request for a certified copy of the certificate of death and the mailing of such certificate exceeded twenty-one days.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed electronically by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on an electronic form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the person listed in section 30-2223 or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

**Source:** Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184; Laws 2009, LB195, § 68; Laws 2012, LB1042, § 4; Laws 2014, LB998, § 14; Laws 2016, LB786, § 1; Laws 2017, LB268, § 15.

#### Cross References

**For authority of chiropractors to sign death certificates,** see section 38-811.

**For authority of physician assistants to sign death certificates,** see section 38-2047.

**Medical Assistance Act,** see section 68-901.

**Organ and tissue donation,** notation required, see section 71-4816.

Medical certificate is not admissible as proof of cause of death. *O'Neil v. Union Nat. Life Ins. Co.*, 162 Neb. 284, 75 N.W.2d 739 (1956).

An autopsy is required and justified and may be ordered by the county attorney, without the consent of the family, whenever it is necessary to determine whether or not the cause of death of

a human being involved unlawful means. *Sturgeon v. Crosby Mortuary*, 140 Neb. 82, 299 N.W. 378 (1941).

In a controversy between individuals where the cause of death is a material issue, the medical certificate of death, executed by the physician last in attendance, is not competent proof of the cause of death as recited therein. *Omaha & C. B. St. Ry. Co. v. Johnson*, 109 Neb. 526, 191 N.W. 691 (1922).

#### **71-605.01 Death certificate; death in military service outside continental limits of United States; recording.**

Death certificates issued by or under the authority of the United States for persons who were residents of Nebraska at the time they entered the military or

armed forces of the United States, and died while in the service of their country while outside the continental limits of the United States may be recorded with the department.

**Source:** Laws 1947, c. 233, § 1, p. 739; Laws 1949, c. 203, § 1, p. 588; Laws 1996, LB 1044, § 518; Laws 2007, LB296, § 406.

**71-605.02 Death certificate; death in military service outside continental limits of United States; fees.**

The department shall preserve permanently and index all such certificates and shall charge and collect in advance the fee prescribed in section 71-612, to be paid by the applicant for each certified copy supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record, whether or not the record is found on file with the department. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as provided in section 71-612.

**Source:** Laws 1947, c. 233, § 2, p. 739; Laws 1965, c. 419, § 1, p. 1342; Laws 1967, c. 442, § 1, p. 1382; Laws 1973, LB 583, § 7; Laws 1991, LB 703, § 29; Laws 1992, LB 1019, § 48; Laws 1996, LB 1044, § 519; Laws 2007, LB296, § 407.

**71-605.03 Repealed. Laws 1985, LB 42, § 26.**

**71-605.04 Death; autopsy; sudden infant death syndrome; report by county attorney or coroner; to whom.**

The county attorney or coroner shall, within two days of the issuance of the autopsy results showing death suspected due to the sudden infant death syndrome, notify a representative of the Nebraska Sudden Infant Death Syndrome Foundation or the appropriate area community mental health center of the name of the parents of the sudden infant death syndrome victim.

**Source:** Laws 1978, LB 605, § 2; Laws 1990, LB 954, § 1.

**71-606 Stillborn child; death certificate; how registered; duties; certificate of birth resulting in stillbirth.**

(1) A stillborn child shall be registered as a fetal death on a certificate form furnished by the department. Such certificate shall not be required for a child which has not advanced to the twentieth week of gestation. The certificate shall be filed with the department by the funeral director and embalmer in charge of the funeral and shall include a statement of the cause of death made by a person holding a valid license as a physician who was in attendance. In the event of hospital disposition, as provided in section 71-20,121, the entire certificate shall be completed by the attending physician and subscribed to also by the hospital administrator or his or her designated representative. If the attendant is not a physician, the death shall be referred to the county attorney for certification. The same time limit for completion shall apply as for a regular death certificate.

(2)(a) The parent of a stillborn child may request a certificate of birth resulting in stillbirth for such child, regardless of the date of filing of the corresponding fetal death certificate. The department shall provide such certificate upon request and payment of the required fee. For purposes of this section,

certificate of birth resulting in stillbirth means a birth certificate issued to record the birth of a stillborn child.

(b) The person responsible for filing a fetal death certificate under this section shall notify the parent or parents of the stillborn child that such parent may request a certificate of birth resulting in stillbirth and shall provide the necessary information for making such request.

(c) The parent requesting a certificate of birth resulting in stillbirth may provide a name for the stillborn child. If no name is provided, the department shall enter upon the certificate the name “baby boy” or “baby girl” and the last name of the requesting parent. The name on the original or amended certificate of birth resulting in stillbirth shall be the same as that entered on the original or amended fetal death certificate and shall include the state file number of the corresponding fetal death certificate for such child.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 7, p. 782; C.S.1922, § 8237; C.S.1929, § 71-2409; R.S.1943, § 71-606; Laws 1965, c. 418, § 4, p. 1337; Laws 1985, LB 42, § 4; Laws 1989, LB 344, § 11; Laws 1993, LB 187, § 9; Laws 1996, LB 1044, § 520; Laws 1997, LB 307, § 138; Laws 2003, LB 95, § 34; Laws 2007, LB296, § 408; Laws 2008, LB1048, § 1.

**71-607 Nonviable birth; commemorative certificate; department; duties; fee.**

(1)(a) A health care practitioner licensed pursuant to the Uniform Credentialing Act who attends or diagnoses a nonviable birth or a health care facility licensed pursuant to the Health Care Facility Licensure Act at which a nonviable birth occurs shall advise a patient who experiences a nonviable birth that the patient may request a commemorative certificate as provided in this section and, upon request by the patient, shall provide a letter verifying the nonviable birth to the patient. The health care practitioner may delegate this duty to his or her designee. In lieu of a letter, the health care practitioner or his or her designee may provide the patient with a form provided by the department pursuant to subdivision (b) of this subsection and executed by the health care practitioner or his or her designee.

(b) The department shall provide on its web site a form to be executed by a health care practitioner or his or her designee affirming that a patient experienced a nonviable birth that the health care practitioner attended or diagnosed.

(2) Upon the request of the patient and submission of the letter or executed form, the department shall issue a commemorative certificate within sixty days after receipt of such request. The department shall charge a fee not to exceed its actual cost for issuing the commemorative certificate.

(3)(a) The commemorative certificate shall contain the name of the fetus and the gender, if known. If the name is not furnished by the patient, the department shall fill in the commemorative certificate with the name Baby Boy or Baby Girl and the last name of the patient, and if the gender of the child is also unknown, the department shall fill in the commemorative certificate with the name Baby and the last name of the patient.

(b) The following statement shall appear on the front of the commemorative certificate: This commemorative certificate is not proof of a live birth.

(4) The department shall not register the birth associated with a commemorative certificate issued under this section or use it to calculate live birth statistics.

The commemorative certificate is commemorative in nature and has no legal effect.

(5) A commemorative certificate issued under this section shall not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

**Source:** Laws 2018, LB1040, § 3.  
Effective date July 19, 2018.

#### Cross References

**Health Care Facility Licensure Act**, see section 71-401.  
**Uniform Credentialing Act**, see section 38-101.

### **71-608 Repealed. Laws 1985, LB 42, § 26.**

#### **71-608.01 Birth and death certificates; local registration; where filed; exemption.**

Persons in any county containing a city of the metropolitan or primary class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established birth and death registration system shall be exempt from the requirements of direct filing of birth and death certificates required by sections 71-604, 71-605, and 71-606. The certificates for the births and deaths occurring in any such county shall be filed with the vital statistics office of the city-county or county health department within five business days of the date of the birth or death. The city-county or county health department shall forward the certificates to the department within ten business days of the date of the birth or death.

**Source:** Laws 1985, LB 42, § 6; Laws 1997, LB 307, § 139; Laws 2007, LB296, § 409.

#### **71-609 Caskets; sale by retail dealer; record; report.**

Every retail dealer in caskets shall keep a record of sales, which record shall include the name and post office address of the purchaser and the name and date and place of death of the deceased. A report of sales or no sales shall be forwarded to the department on the first day of each month. This requirement shall not apply to persons selling caskets only to dealers or funeral directors and embalmers. Every seller of a casket at retail who does not have charge of the disposition of the body shall enclose within the casket a notice calling attention to the requirements of the law and a blank certificate of death.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 11, p. 783; C.S.1922, § 8241; Laws 1927, c. 166, § 6, p. 450; C.S.1929, § 71-2413; R.S.1943, § 71-609; Laws 1993, LB 187, § 10; Laws 1996, LB 1044, § 521; Laws 2007, LB296, § 410.

#### **71-610 Maternity homes; hospitals; birth reports.**

Maternity homes and lying-in hospitals, and places used as such, shall report to the department on the first day of each month the sex and date of birth of all children born in their respective institutions during the preceding month. The

report shall also show the names and addresses of the parents and attending physicians.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 12, p. 783; C.S.1922, § 8242; Laws 1927, c. 166, § 7, p. 451; C.S.1929, § 71-2414; R.S.1943, § 71-610; Laws 1996, LB 1044, § 522; Laws 2007, LB296, § 411.

**71-611 Department; forms; duty to supply; use of computer-generated forms; authorized.**

The department shall supply all necessary blanks, forms, and instructions pertaining to the recording of births and deaths to physicians, hospitals, and funeral directors and embalmers. Upon written request, the department may authorize a funeral director and embalmer licensed in Nebraska to use computer-generated death certificate forms on paper supplied by the department which is of the same quality and identical in form established in department regulations for death certificates which are not computer-generated.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 13, p. 783; C.S.1922, § 8243; Laws 1927, c. 166, § 8, p. 451; C.S.1929, § 71-2415; R.S.1943, § 71-611; Laws 1953, c. 242, § 1, p. 832; Laws 1959, c. 322, § 1, p. 1179; Laws 1985, LB 42, § 5; Laws 1992, LB 1019, § 49; Laws 1993, LB 187, § 11; Laws 1996, LB 1044, § 523; Laws 2007, LB296, § 412.

**71-612 Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.**

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of sixteen dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.



(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed three dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 14, p. 784; Laws 1921, c. 73, § 1, p. 272; C.S.1922, § 8244; Laws 1927, c. 166, § 9, p.

451; C.S.1929, § 71-2416; Laws 1941, c. 140, § 10, p. 554; C.S.Supp.,1941, § 71-2416; Laws 1943, c. 147, § 1, p. 532; R.S. 1943, § 71-612; Laws 1951, c. 229, § 1, p. 830; Laws 1959, c. 323, § 1, p. 1180; Laws 1963, c. 410, § 1, p. 1330; Laws 1965, c. 418, § 6, p. 1338; Laws 1965, c. 419, § 2, p. 1342; Laws 1973, LB 583, § 8; Laws 1983, LB 617, § 14; Laws 1985, LB 42, § 7; Laws 1986, LB 333, § 9; Laws 1989, LB 344, § 12; Laws 1991, LB 703, § 30; Laws 1992, LB 1019, § 50; Laws 1993, LB 536, § 63; Laws 1995, LB 406, § 32; Laws 1996, LB 1044, § 524; Laws 1997, LB 307, § 140; Laws 2002, Second Spec. Sess., LB 48, § 3; Laws 2004, LB 1005, § 56; Laws 2006, LB 994, § 86; Laws 2006, LB 1115, § 39; Laws 2007, LB296, § 413; Laws 2014, LB994, § 1.

**71-613 Violation; penalty.**

Except as otherwise provided in section 71-649, any person violating any of the provisions of sections 71-601.01 to 71-616 shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 15, p. 784; C.S.1922, § 8245; C.S.1929, § 71-2417; R.S.1943, § 71-613; Laws 1977, LB 39, § 153; Laws 2005, LB 301, § 26.

**71-614 Marriage licenses; monthly reports; county clerk; duties; failure; penalty.**

(1) On or before the fifth day of each month, the county clerk of each county shall return to the department upon suitable blank forms, to be provided by the department, a statement of all marriages recorded by him or her during the preceding calendar month. If no marriages were performed in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such returns, such county clerk shall, for each such neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the proper county, to be collected as debts of like amount are now collectible.

(2) As soon as possible after completion of an amendment to a marriage license by the department, the department shall forward a noncertified copy of the marriage license reflecting the amendment to the county clerk of the county in which the license was filed. Upon receipt of the amended copy, the county clerk shall make the necessary changes on the marriage license on file in his or her office to reflect the amendment.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 16, p. 784; C.S.1922, § 8246; Laws 1927, c. 166, § 10, p. 452; C.S.1929, § 71-2418; R.S.1943, § 71-614; Laws 1959, c. 323, § 2, p. 1180; Laws 1967, c. 443, § 1, p. 1383; Laws 1967, c. 444, § 1, p. 1385; Laws 1977, LB 73, § 1; Laws 1986, LB 525, § 13; Laws 1992, LB 1019, § 53; Laws 1996, LB 1044, § 525; Laws 1997, LB 307, § 141; Laws 2007, LB296, § 414.

**71-615 Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.**

On or before the fifth day of each month, the clerk of the district court of each county shall make and return to the department, upon suitable forms furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information requested by the department shall be furnished by the plaintiff or his or her legal representative and presented to the clerk of the court with the complaint. If, after reasonable attempts are made by the plaintiff or his or her legal representative to attain such information, the information is unavailable, the designation unknown shall be accepted by the department. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 18, p. 785; C.S.1922, § 8248; Laws 1927, c. 166, § 11, p. 452; C.S.1929, § 71-2419; R.S.1943, § 71-615; Laws 1959, c. 323, § 3, p. 1181; Laws 1967, c. 443, § 2, p. 1384; Laws 1967, c. 444, § 2, p. 1386; Laws 1977, LB 73, § 2; Laws 1989, LB 344, § 13; Laws 1996, LB 1044, § 526; Laws 1996, LB 1296, § 28; Laws 1997, LB 229, § 40; Laws 2007, LB296, § 415; Laws 2012, LB904, § 1.

#### **71-616 Reports; department to tabulate.**

The department shall preserve permanently and index all births, deaths, marriages, and divorces received, and shall tabulate statistics therefrom.

**Source:** Laws 1919, c. 190, tit. VI, art. II, div. IX, § 19, p. 785; C.S.1922, § 8249; Laws 1927, c. 166, § 12, p. 453; C.S.1929, § 71-2420; R.S.1943, § 71-616; Laws 1996, LB 1044, § 527; Laws 2007, LB296, § 416.

#### **71-616.01 Match birth and death certificates; viewing records; department; powers.**

To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the department is authorized to match birth and death certificates and to post the facts of death to the appropriate birth certificate. To assist in the matching process, the department is authorized to enter into agreements with offices of vital records outside the state to exchange the birth or death records or reports of each state's citizens. Copies of birth certificates issued of deceased persons shall be marked deceased.

The department may also maintain applications for viewing vital records and match the same against requests for certified copies or adopt such other security measures as may serve to identify requests to view vital records made for unlawful or fraudulent purposes.

**Source:** Laws 1992, LB 1019, § 51.

#### **71-616.02 Filing and registering of information; additional methods authorized.**

Information required in certificates or reports authorized by sections 71-605.02, 71-612, and 71-616.01 may be filed and registered by electronic or

other means if authorized by the department and as prescribed by department regulation.

**Source:** Laws 1992, LB 1019, § 52.

**71-616.03 Filing and issuing vital records; additional methods authorized.**

The department may accept for filing and issue certified copies of vital records generated from microfilm, imaging, electronic means, or any other medium as designated by the department.

**Source:** Laws 1994, LB 886, § 5; Laws 1996, LB 1044, § 528; Laws 2007, LB296, § 417.

**71-616.04 Preservation of vital records; methods authorized.**

To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports of vital records. Such reproductions, when verified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

**Source:** Laws 1994, LB 886, § 6; Laws 1996, LB 1044, § 529; Laws 1997, LB 307, § 142; Laws 2007, LB296, § 418.

**71-616.05 Repealed. Laws 2004, LB 1005, § 143.**

**71-617 Repealed. Laws 1985, LB 42, § 27.**

**71-617.01 Delayed Birth Registration Act, how cited.**

Sections 71-617.01 to 71-617.15 shall be known and may be cited as the Delayed Birth Registration Act.

**Source:** Laws 1985, LB 42, § 8.

**71-617.02 Delayed birth registration; application; fee; certificate registered; documentary evidence, defined.**

A notarized application may be filed with the department for a delayed registration of birth of any person born in the State of Nebraska whose birth is not registered within one year after the date of birth. If the birth occurred in the State of Nebraska at any time since the commencement in 1905 of mandatory registration under the laws of Nebraska, the applicant shall pay the statutory file search fee prescribed by section 71-612 to determine that such birth is not recorded. The certificate shall be registered based upon documentary evidence furnished to substantiate the alleged facts of birth. As used in the Delayed Birth Registration Act, unless the context otherwise requires, documentary evidence shall mean independent records each of which was created for a different purpose.

**Source:** Laws 1985, LB 42, § 9; Laws 1997, LB 307, § 144; Laws 2007, LB296, § 419.

**71-617.03 Delayed birth certificate; contents.**

Any birth certificate filed one year or more after the date of birth shall be marked Delayed and shall show on the face of the certificate the date of the

delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be listed on the certificate.

**Source:** Laws 1985, LB 42, § 10.

**71-617.04 Delayed birth certificate; persons applying.**

In order to request the issuance of a certificate of delayed birth registration, the applicant shall be at least eighteen years of age. If the applicant is not yet eighteen years of age, application may be made only by the applicant's father, mother, guardian, or attendant at birth.

**Source:** Laws 1985, LB 42, § 11.

**71-617.05 Delayed birth certificate; application; fee; records required.**

Each application for a certificate of delayed birth registration shall be accompanied by the fees required by subsection (1) of section 71-617.15 and three independent supporting records as provided in section 71-617.06, only one of which may be an affidavit of personal recollection from a person at least five years older than the applicant and having a personal knowledge of the facts at the time of birth. Any evidence used shall relate to the date and place of birth and at least one item of documentary evidence shall correctly establish parentage.

**Source:** Laws 1985, LB 42, § 12; Laws 2004, LB 1005, § 57.

**71-617.06 Delayed birth certificate; independent supporting records; enumerated.**

Independent supporting records shall include, but not be limited to, original records or certified or notarized copies of:

- (1) A recorded certificate of baptism performed under age four;
- (2) An insurance policy application personal history sheet;
- (3) A federal census record;
- (4) A school census record;
- (5) A military service record;
- (6) A family Bible record when proved beyond a reasonable doubt that the record was made before the child reached age four;
- (7) Other evidence on file in the department taken from other registrations;
- (8) A record at least five years old or established within seven years of the date of birth such as a physician's certificate or an affidavit taken from physician, hospital, nursing, or clinic records;
- (9) An affidavit from a parent or longtime acquaintance;
- (10) A printed notice of birth;
- (11) A record from a birthday or baby book;
- (12) A school record; or
- (13) A church record.

An affidavit shall include the full name of the person whose birth is being registered as well as the date and place of birth and the basis of the affiant's knowledge of these facts.

**Source:** Laws 1985, LB 42, § 13; Laws 1997, LB 307, § 145; Laws 2007, LB296, § 420.

**71-617.07 Refusal to issue delayed birth certificate; reasons; appeal.**

If an applicant for a certificate of delayed birth registration fails to submit the minimum documentation required for the delayed registration or if the department has reasonable cause to question the validity or adequacy of either the applicant's sworn statement or the documentary evidence due to conflicting evidence submitted and if the deficiencies are not corrected, the department shall not issue and register a delayed certificate of birth and shall advise the applicant of the reasons for such action. The department shall further advise the applicant of his or her right of appeal to the department and then, if not satisfied, to the county court as provided in section 71-617.08.

**Source:** Laws 1985, LB 42, § 14; Laws 1996, LB 1044, § 531; Laws 1997, LB 307, § 146; Laws 2007, LB296, § 421.

**71-617.08 Delayed birth certificate; denial; appeal; procedure.**

(1) If a delayed certificate of birth is denied by the department, a petition signed and sworn to by the petitioner may be filed with the county court of Lancaster County, of the county of the petitioner's residence, or of the county in which the birth is claimed to have occurred.

(2) The petition shall be made on a form prescribed and furnished by the department and shall allege:

(a) That the person for whom a delayed certificate of birth is sought was born in this state;

(b) That no certificate of birth of such person can be found in the files or records of the department;

(c) That diligent efforts by the petitioner have failed to obtain evidence required by sections 71-617.05 and 71-617.06 that is considered acceptable by the department;

(d) That the department has refused to register a delayed certificate of birth; and

(e) Such other allegations as may be required.

**Source:** Laws 1985, LB 42, § 15; Laws 1996, LB 1044, § 532; Laws 1997, LB 307, § 147; Laws 2007, LB296, § 422.

**71-617.09 Delayed birth certificate; petition; accompanying documents.**

A statement of the department indicating why a delayed certificate of birth was not issued and registered and all documentary evidence which was submitted to the department in support of such registration shall accompany a petition filed under section 71-617.08.

**Source:** Laws 1985, LB 42, § 16; Laws 1996, LB 1044, § 533; Laws 1997, LB 307, § 148; Laws 2007, LB296, § 423.

**71-617.10 Delayed birth certificate; hearing; notice; witnesses.**

The court shall fix a time and place for a hearing upon a petition filed under section 71-617.08 and shall give the department ten calendar days' notice of such hearing. Authorized representatives of the department may appear and testify in the proceeding.

**Source:** Laws 1985, LB 42, § 17; Laws 1996, LB 1044, § 534; Laws 1997, LB 307, § 149; Laws 2007, LB296, § 424.

**71-617.11 Delayed birth certificate; hearing; findings; order; contents.**

If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the department to establish a certificate of birth. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

**Source:** Laws 1985, LB 42, § 18; Laws 1997, LB 307, § 150; Laws 2007, LB296, § 425.

**71-617.12 Delayed birth certificate; court order; clerk of the court; duties.**

The clerk of the court shall forward any order made under section 71-617.11 to the department not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the department and shall constitute the certificate of birth.

**Source:** Laws 1985, LB 42, § 19; Laws 1997, LB 307, § 151; Laws 2007, LB296, § 426.

**71-617.13 Delayed birth certificate; department; duties.**

The department shall certify on a delayed registration of birth that no other record of the birth is on file with the department.

**Source:** Laws 1985, LB 42, § 20; Laws 1997, LB 307, § 152; Laws 2007, LB296, § 427.

**71-617.14 Repealed. Laws 2004, LB 1005, § 143.**

**71-617.15 Delayed birth certificate; fees.**

(1) The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 when an application for a delayed birth certificate is filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect an additional fee of one dollar when a delayed birth certificate is issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of a delayed birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

**Source:** Laws 1985, LB 42, § 22; Laws 1986, LB 333, § 10; Laws 1991, LB 703, § 31; Laws 1992, LB 1019, § 54; Laws 1995, LB 406,

§ 33; Laws 1996, LB 1044, § 535; Laws 1997, LB 307, § 154; Laws 2002, Second Spec. Sess., LB 48, § 4; Laws 2004, LB 1005, § 58; Laws 2006, LB 994, § 87; Laws 2007, LB296, § 428.

**71-618 Repealed. Laws 1985, LB 42, § 27.**

**71-619 Repealed. Laws 1985, LB 42, § 27.**

**71-620 Repealed. Laws 1985, LB 42, § 27.**

**71-621 Repealed. Laws 1985, LB 42, § 27.**

**71-622 Repealed. Laws 1985, LB 42, § 27.**

**71-623 Repealed. Laws 1985, LB 42, § 27.**

**71-624 Repealed. Laws 1985, LB 42, § 27.**

**71-625 Repealed. Laws 1985, LB 42, § 27.**

**71-626 Adoptive birth certificate; adoption decree; court; report of adoption; contents.**

(1) For each adoption of a Nebraska-born or foreign-born person decreed by any court of this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the department. The report shall (a) include the original name, date, and place of birth and the name of the parent or parents of such person; (b) provide information necessary to establish a new certificate of birth of the person adopted; (c) provide the name and address of the child placement agency, if any, which placed the child for adoption; and (d) identify the decree of adoption and be certified by the clerk of the court.

(2) Information in the possession of the petitioner necessary to prepare the report of adoption shall be furnished with the petition for adoption by each petitioner or his or her attorney. The social or welfare agency or other person concerned shall supply the court with such additional information in his or her possession as may be necessary to complete the report. The supplying of such information shall be a prerequisite to the issuance of a decree.

(3) Whenever an adoption decree is amended or set aside, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

(4) Not later than the tenth day after the decree has been entered, the clerk of such court shall forward the report to the department whenever an adoptive birth certificate is to be filed or has already been filed.

**Source:** Laws 1941, c. 143, § 1, p. 571; C.S.Supp., 1941, § 43-113; R.S. 1943, § 71-626; Laws 1945, c. 168, § 1, p. 540; Laws 1959, c. 323, § 5, p. 1182; Laws 1961, c. 342, § 1, p. 1093; Laws 1965, c. 418, § 9, p. 1339; Laws 1971, LB 246, § 1; Laws 1980, LB 681, § 2; Laws 1980, LB 992, § 30; Laws 1996, LB 1044, § 536; Laws 1997, LB 307, § 155; Laws 2007, LB296, § 429.

**Cross References**

For proceedings for adoption of children, see Chapter 43, article 1.



**71-626.01 Adopted person; new birth certificate; conditions; contents; rules and regulations.**

(1) The department shall establish a new certificate of birth for a person born in the State of Nebraska whenever it receives any of the following:

(a) A report of adoption as provided in section 71-626 on a form supplied by the department or a certified copy of the decree of adoption together with the information required in such report, except that a new certificate of birth shall not be established if so requested in writing by the court decreeing the adoption, the adoptive parents, or the adopted person; or

(b) A report of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or nation declaring adopted a person born in the State of Nebraska, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth, except that a new certificate of birth shall not be established when so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(2) The new certificate of birth for a person born in the State of Nebraska shall be on the form in use at the time of its preparation and shall include the following items in addition to such other information as may be necessary to complete the form:

- (a) The adoptive name of the person;
- (b) The names and personal particulars of the adoptive parents;
- (c) The date and place of birth as transcribed from the original certificate;
- (d) The name of the attendant, printed or typed;
- (e) The same birth number as was assigned to the original certificate; and
- (f) The original filing date.

The data necessary to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the department.

(3) When an adoptive certificate of birth is established, the actual place of birth and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption shall not be subject to inspection except (a) upon order of a court of competent jurisdiction, (b) as provided in sections 43-138 to 43-140, (c) as provided in sections 43-146.11 to 43-146.13, or (d) as provided by rules and regulations of the department. Upon receipt of notice that an adoption has been set aside, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction.

(4) Whenever a new certificate of birth is established by the department, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection.

(5) The department may adopt and promulgate such rules and regulations as are necessary and proper to assist it in the implementation and administration of section 71-626 and this section.

**Source:** Laws 1971, LB 246, § 2; Laws 1980, LB 992, § 31; Laws 1988, LB 372, § 24; Laws 1996, LB 1044, § 537; Laws 1997, LB 307, § 156; Laws 2007, LB296, § 430.

**71-627 Adoptive birth certificates; filing; copies; issuance.**

(1) The certificate of birth of adopted children shall be filed as other certificates of birth. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each certificate filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each certificate issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of an adoptive birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

**Source:** Laws 1941, c. 143, § 2, p. 572; C.S.Supp., 1941, § 43-114; R.S. 1943, § 71-627; Laws 1953, c. 243, § 1, p. 833; Laws 1959, c. 323, § 6, p. 1183; Laws 1961, c. 342, § 2, p. 1094; Laws 1965, c. 418, § 10, p. 1340; Laws 1965, c. 419, § 4, p. 1343; Laws 1971, LB 246, § 3; Laws 1973, LB 583, § 10; Laws 1983, LB 617, § 16; Laws 1986, LB 333, § 11; Laws 1991, LB 703, § 32; Laws 1992, LB 1019, § 55; Laws 1995, LB 406, § 34; Laws 1996, LB 1044, § 538; Laws 1997, LB 307, § 157; Laws 2002, Second Spec. Sess., LB 48, § 5; Laws 2004, LB 1005, § 59; Laws 2006, LB 994, § 88; Laws 2007, LB296, § 431.

**71-627.01 Adoptive birth certificate; decree of adoption of child born in another state; notice of entry of decree.**

Whenever a decree of adoption is entered in any court of competent jurisdiction in the State of Nebraska, as to a child born in another state, the judge of the court in which such decree is entered shall, on forms to be furnished by the department, notify the agency having authority to issue adoptive birth certificates in the state in which such child was born for the purpose of securing the issuance of an adoptive birth certificate from the state of birth.

**Source:** Laws 1961, c. 342, § 3, p. 1094; Laws 1996, LB 1044, § 539; Laws 1997, LB 307, § 158; Laws 2007, LB296, § 432.

**71-627.02 Adoption of foreign-born person; birth certificate; contents.**

Upon receipt of a Report of Adoption or a certified copy of a decree of adoption issued by any court of competent jurisdiction in the State of Nebraska as to any foreign-born person, the department shall prepare a birth certificate in the new name of the adopted person. The birth certificate shall show specifically (1) the new name of the adopted person, (2) the date of birth and sex of the adopted person, (3) statistical information concerning the adoptive parents in place of the natural parents, and (4) the true or probable place of birth including the city or town and country.

**Source:** Laws 1961, c. 342, § 4, p. 1094; Laws 1980, LB 681, § 3; Laws 1980, LB 992, § 32; Laws 1994, LB 886, § 7; Laws 1996, LB 1044, § 540; Laws 1997, LB 307, § 159; Laws 2007, LB296, § 433.

**71-628 Children born out of wedlock; birth certificate; issuance; when authorized.**

In case of the legitimation of any child born in Nebraska by the subsequent marriage of such child's parents as provided in section 43-1406, the department, upon the receipt of a certified copy of the marriage certificate or abstract of marriage of the parents and a statement of the parents acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated, in substantially the same form as that used for other live births. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each new certificate of birth filed. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

**Source:** Laws 1945, c. 173, § 1, p. 552; Laws 1959, c. 323, § 7, p. 1183; Laws 1983, LB 617, § 17; Laws 1986, LB 333, § 12; Laws 1992, LB 1019, § 56; Laws 1994, LB 886, § 8; Laws 1994, LB 1224, § 83; Laws 1995, LB 406, § 35; Laws 1997, LB 307, § 160; Laws 2002, Second Spec. Sess., LB 48, § 6; Laws 2004, LB 1005, § 60; Laws 2006, LB 994, § 89; Laws 2006, LB 1115, § 40; Laws 2007, LB296, § 434.

**71-629 Children born out of wedlock; legitimized; birth certificate; copies; issuance; inspection; when authorized.**

A certified copy or copies of the certificate of birth of any such legitimized child may be furnished upon request by the department. The evidence upon which the new certificate is made may be furnished upon request to a parent of such legitimized child or to the legitimized child if such child is nineteen years of age or older. The evidence upon which the new certificate is made shall be available for inspection by any other person only upon the order of a court of competent jurisdiction, and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

**Source:** Laws 1945, c. 173, § 2, p. 553; Laws 1996, LB 1044, § 541; Laws 1997, LB 307, § 161; Laws 2007, LB185, § 4; Laws 2007, LB296, § 435.

**71-630 Birth or death certificate; erroneous or incomplete; correction; department; duties.**

(1) A birth or death certificate filed with the department may be amended only in accordance with this section and sections 71-635 to 71-644 and rules and regulations adopted pursuant thereto by the department as necessary and proper to protect the integrity and accuracy of records of vital statistics.

(2) A certificate that is amended under this section shall have a properly dated reference placed on the face of the certificate and state that it is amended, except as provided in subsection (4) of this section.

(3) Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or his or her parent, guardian, or legal representative, the department shall amend the certificate of birth to reflect the change in name.

(4) Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the department shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Such certificate shall not be marked amended.

**Source:** Laws 1947, c. 234, § 1, p. 740; Laws 1959, c. 323, § 8, p. 1183; Laws 1971, LB 245, § 1; Laws 1996, LB 1044, § 542; Laws 1997, LB 307, § 162; Laws 2007, LB296, § 436.

**71-631 Repealed. Laws 1971, LB 245, § 13.**

**71-632 Repealed. Laws 1971, LB 245, § 13.**

**71-633 Repealed. Laws 1971, LB 245, § 13.**

**71-634 Birth or death certificate; correction.**

The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each proceeding under sections 71-630 and 71-635 to 71-644. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect the fees required by section 71-612 for a certified copy of the amended record. All fees for a certified copy shall be handled as provided in section 71-612.

If a certificate is amended pursuant to sections 71-630 and 71-635 to 71-644 as the result of an error committed by the department in the issuance of such certificate, the department may waive any fee required under this section.

**Source:** Laws 1947, c. 234, § 5, p. 741; Laws 1953, c. 244, § 1, p. 834; Laws 1959, c. 323, § 9, p. 1184; Laws 1965, c. 418, § 11, p. 1340; Laws 1965, c. 419, § 5, p. 1344; Laws 1971, LB 245, § 2; Laws 1973, LB 483, § 11; Laws 1978, LB 671, § 1; Laws 1983, LB 617, § 18; Laws 1991, LB 703, § 33; Laws 1992, LB 1019, § 57; Laws 1995, LB 406, § 36; Laws 1996, LB 1044, § 543; Laws 2001, LB 209, § 18; Laws 2004, LB 1005, § 61; Laws 2006, LB 994, § 90; Laws 2007, LB296, § 437.

**71-635 Birth or death certificate; amendments; application; by whom made.**

(1) To amend a birth certificate, application may be made by one of the parents, the guardian, the registrant if of legal age, or the individual responsible for filing the certificate.

(2) To amend a death or fetal death certificate, except the medical certification, application may be made by the next of kin or the funeral director and embalmer or person acting as such. Amendments to the medical certification of cause of death section of the certificate shall be requested by the attending physician or person certifying such section.

**Source:** Laws 1971, LB 245, § 2; Laws 1993, LB 187, § 12.

**71-636 Birth certificates; amendments.**

Amendment of obvious errors, of transposition of letters in words of common knowledge, or of omissions on birth certificates may be made by the department within the first year after the date of the birth, either upon its own observation, upon query, or upon request of a person with a direct and tangible

interest in the certificate. When such additions or minor amendments are made by the department, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the reverse side of the certificate in such a way as not to become a part of the certificate. The certificate shall not be marked amended.

**Source:** Laws 1971, LB 245, § 3; Laws 1985, LB 42, § 23; Laws 1992, LB 1019, § 58; Laws 1997, LB 307, § 163; Laws 2007, LB296, § 438.

**71-637 Birth or death certificates; amendment; evidence required.**

All other amendments to vital records made during the first year, unless otherwise provided in sections 71-630 and 71-635 to 71-644, shall be supported by (1) an affidavit setting forth information to identify the certificate, the incorrect data as it is listed on the certificate, and the correct data as it should appear; and (2) one item of documentary evidence supporting the amendment. Certificates amended by this procedure shall be marked amended.

**Source:** Laws 1971, LB 245, § 4.

**71-638 Birth or death certificates; application for amendment; made one year after date; evidence required.**

Applications for amendments to vital records made one year or more after the event, unless otherwise provided in the regulations or by law, shall be supported by (1) an affidavit setting forth information to identify the certificate, the incorrect data as it is listed on the certificate, and the correct data as it should appear; and (2) two or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

**Source:** Laws 1971, LB 245, § 5.

**71-639 Birth or death certificate; amendments; evaluation of evidence.**

The department shall evaluate all evidence submitted for amendments to vital records and when it finds reason to question its validity or adequacy it may reject the amendment and shall advise the applicant of the reasons for this action.

**Source:** Laws 1971, LB 245, § 6; Laws 1997, LB 307, § 164; Laws 2007, LB296, § 439.

**71-640 Birth certificates; given names; change; procedure.**

(1) Until the registrant's first birthday, given names may be changed upon written request of (a) both parents, (b) the mother in the case of a child born out of wedlock or the death or incapacity of the father, (c) the father in the case of the death or incapacity of the mother, or (d) the guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents.

(2) At any time after the registrant's first birthday and until the seventh birthday, given names may be changed upon written request as specified in subsection (1) of this section and submission of one or more items of documentary evidence to support the change.

(3) These procedures may be employed to change a given name only once. Thereafter, and at any time after the seventh birthday, given names may be changed only upon submission of a court order.

**Source:** Laws 1971, LB 245, § 7.

**71-640.01 Birth certificates; identification of father.**

The information pertaining to the identification of the father at the time of birth of an infant born in this state and reported on a birth certificate, filled out and filed pursuant to the Vital Statistics Act, shall comply with the following:

(1) If the mother was married at the time of either conception or birth or at any time between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless (a) paternity has been determined otherwise by a court of competent jurisdiction, (b) the mother and the mother's husband execute affidavits attesting that the husband is not the father of the child, in which case information about the father shall be omitted from the certificate, or (c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. In such event, the putative father shall be shown as the father on the certificate. For affidavits executed under subdivision (b) or (c) of this subdivision, each signature shall be individually notarized;

(2) If the mother was not married at the time of either conception or birth or at any time between conception and birth, the name of the father shall not be entered on the certificate without the written consent of the mother and the person named as the father;

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate in accordance with the finding of the court; and

(4) If the father is not named on the certificate, no other information about the father shall be entered thereon.

The identification of the father as provided in this section shall not be deemed to affect the legitimacy of the child or duty to support as set forth in sections 42-377 and 43-1401.

**Source:** Laws 1977, LB 72, § 1; Laws 1994, LB 886, § 9; Laws 2005, LB 301, § 27.

**71-640.02 Children born out of wedlock; birth certificate; enter name of father; when.**

The department shall enter on the birth certificate of any child born out of wedlock the name of the father of the child upon receipt of (1) a certified copy of a court order showing that paternity has been established or a statement in writing by the father that he is the father of the child and (2) the written request of (a) the parent having legal custody of the child or (b) the guardian or agency having legal custody of the child. The surname of the child shall be determined in accordance with section 71-640.03.

**Source:** Laws 1978, LB 671, § 2; Laws 1994, LB 886, § 10; Laws 1997, LB 307, § 165; Laws 2007, LB296, § 440.

**71-640.03 Birth certificate; surname of child.**

(1) In any case in which paternity of a child is determined by a court of competent jurisdiction, the surname of the child may be entered on the record the same as the surname of the father.

(2) The surname of the child shall be the parents' prerogative, except that the department shall not accept a birth certificate with a child's surname that implies any obscene or objectionable words or abbreviations.

**Source:** Laws 1994, LB 886, § 11; Laws 1996, LB 1044, § 544; Laws 2007, LB296, § 441.

Under subsection (1) of this section, a district court, exercising jurisdiction in a paternity action, has discretionary power to decide whether a child's surname should be changed to the surname of the father. Under the plain language of subsection (1) of this section, after paternity is established by a district court, the district court has the discretion to decide only paternity-related issues, i.e., whether to change the child's previous surname to the father's surname. Pursuant to subsection (1) of this section, in a paternity action, a court, in deciding whether a child's surname should be changed to the father's surname, must consider the best interests of the child regarding a change of name. *Jones v. Paulson*, 261 Neb. 327, 622 N.W.2d 857 (2001).

Under former law, a court, exercising jurisdiction in a filiation proceeding, has the discretionary power to decide whether a child's surname shall be changed from the legal surname of the child's mother to the surname of the child's father, and must consider the best interests of the child regarding a change of

name. *Lancaster v. Brenneis*, 227 Neb. 371, 417 N.W.2d 767 (1988).

Under former law, determination as to the name to be borne by a minor child of parties to a dissolution action is a matter initially entrusted to the sound discretion of the trial judge, which matter, on appeal, will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial judge's discretion, keeping in mind that the Supreme Court will give weight to the fact that the trial judge observed and heard the witnesses and accepted one version of the facts rather than the other. *Cain v. Cain*, 226 Neb. 203, 410 N.W.2d 476 (1987).

Under former law, in deciding what the surname of a child conceived in wedlock but born during dissolution proceedings should be, each subsection of this section should be given equal weight, with the best interests of the child as the paramount interest. Each parent has an equal right and interest in determining the surname of the child. *Cohee v. Cohee*, 210 Neb. 855, 317 N.W.2d 381 (1982).

**71-640.04 Birth certificate; name of father changed; when.**

The name of the father as shown on the birth certificate may be changed and a new certificate issued only when a determination of paternity is made by a court of competent jurisdiction. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

**Source:** Laws 1994, LB 886, § 12.

**71-641 Birth certificates; without given name; legal change of name; procedure.**

(1) Until the registrant's seventh birthday, the given name, for a child whose birth was recorded without a given name, may be added based upon an affidavit signed by (a) both parents, (b) the mother in the case of a child born out of wedlock or the death or incapacity of the father, (c) the father in the case of the death or incapacity of the mother, or (d) the guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents. A certificate amended in this manner prior to the first birthday shall not be marked amended.

(2) After the seventh birthday, one or more items of documentary evidence must be submitted to substantiate the name being added.

(3) For a legal change of name, a certified copy of the court order changing the name must be presented to the department along with data to identify the birth certificate and a request that it be amended to show the new name.

**Source:** Laws 1971, LB 245, § 8; Laws 1997, LB 307, § 166; Laws 2007, LB296, § 442.

**71-642 Birth or death certificates; medical certification; amendment; requirements.**

All items in the medical certification or of a medical nature in a vital record may be amended only upon receipt of a signed statement from those responsible for completion of the entries involved as provided in the Vital Statistics Act. The department may, at its discretion, require documentary evidence to substantiate the requested amendment.

**Source:** Laws 1971, LB 245, § 9; Laws 1997, LB 307, § 167; Laws 2005, LB 301, § 28.

**71-643 Birth or death certificate; additional amendment; requirements.**

When an entry on a vital record has been amended, that entry shall not be amended again unless (1) it can be shown that the first amendment was made through mistake, or (2) a court order is received from a court of competent jurisdiction.

**Source:** Laws 1971, LB 245, § 10.

**71-644 Birth or death certificate; amendment; requirements.**

A certificate or report that is amended under sections 71-635 to 71-644 shall indicate that it has been amended as provided by rules and regulations of the department. A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.

**Source:** Laws 1971, LB 245, § 11; Laws 1985, LB 42, § 24; Laws 1992, LB 1019, § 59; Laws 1994, LB 886, § 13; Laws 1996, LB 1044, § 545; Laws 2007, LB296, § 443.

**71-645 Birth defects; findings and duties.**

It is hereby found that the occurrence of malformation or inherited disease at the time of birth is a tragedy for the child, the family, and the community, and a matter of vital concern to the public health. In order to provide for the protection and promotion of the health of the citizens of the state, the department shall have the responsibility for the implementation and development of scientific investigations and research concerning the causes, methods of prevention, treatment, and cure of birth defects.

**Source:** Laws 1972, LB 1203, § 1; Laws 1996, LB 1044, § 546; Laws 2007, LB296, § 444.

**71-646 Birth defects; registry; purpose; information released.**

The department shall establish a birth defects registry for the purpose of initiating and conducting investigations of the causes, mortality, methods of prevention, treatment, and cure of birth defects and allied diseases. Any information released from the registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

**Source:** Laws 1972, LB 1203, § 2; Laws 1993, LB 536, § 64; Laws 1996, LB 1044, § 547; Laws 2007, LB296, § 445.

**71-647 Birth defects; department; powers and duties; information released.**



(1) The department shall have and may exercise the following powers and duties:

(a) To conduct scientific investigations and surveys of the causes, mortality, methods of prevention, treatment, and cure of birth defects;

(b) To publish at least annually the results of such investigations and surveys for the benefit of the public health and to annually collate such publications for distribution to scientific organizations and qualified scientists and physicians;

(c) To carry on programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes, methods of prevention, treatment, and cure of birth defects;

(d) To conduct and support clinical counseling services in medical facilities; and

(e) To secure necessary scientific, educational, training, technical, administrative, and operational personnel and services including laboratory facilities by contract or otherwise from public or private entities in order to carry out the purposes of this section.

(2) Any information released from the birth defects registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

**Source:** Laws 1972, LB 1203, § 3; Laws 1993, LB 536, § 65; Laws 1996, LB 1044, § 548; Laws 2007, LB296, § 446.

#### **71-648 Birth defects; reports.**

Birth defects and allied diseases shall be reported by physicians, hospitals, and persons in attendance at births in the manner and on such forms as may be prescribed by the department. Such reports may be included in the monthly report to the department on births as required by section 71-610. Such reports shall be forwarded to the department no later than the tenth day of the succeeding month after the birth. When objection is made by either parent to furnishing information relating to the medical and health condition of a live-born child because of conflict with religion, such information shall not be required to be entered as provided in this section.

**Source:** Laws 1972, LB 1203, § 4; Laws 1992, LB 1019, § 60; Laws 1993, LB 536, § 66; Laws 1996, LB 1044, § 549; Laws 2007, LB296, § 447.

#### **Cross References**

**Medically handicapped child**, report of birth, see section 71-1405.

#### **71-649 Vital statistics; unlawful acts; enumerated; violations; penalties; warning statement.**

(1) Any person who (a) willfully and knowingly makes any false statement in a certificate, record, or report required to be filed pursuant to the Vital Statistics Act, in an application for an amendment thereof, or in an application for a certified copy of a vital record or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, certificate, or amendment thereof; (b) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed pursuant to the

act or a certified copy of such certificate, record, or report; (c) willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated; (d) with the intention to deceive, willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that such certificate or certified copy was issued upon a certificate which is false in whole or in part or which relates to the birth of another person, whether living or deceased; (e) willfully and knowingly furnishes or possesses a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purposes of deception by a person other than the person to whom the certificate of birth relates; (f) without lawful authority possesses any certificate, record, or report required by the act or a copy or certified copy of such certificate, record, or report knowing the same to have been stolen or otherwise unlawfully obtained; or (g) willfully and knowingly tampers with an electronic signature authorized under section 71-603.01 shall be guilty of a Class IV felony.

(2) Any person who (a) willfully and knowingly refuses to provide information required by the Vital Statistics Act or rules and regulations adopted under the act or (b) willfully and knowingly neglects or violates any of the provisions of the act or refuses to perform any of the duties imposed upon him or her under the act shall be guilty of a Class I misdemeanor.

(3) The department may include on any appropriate certificate or document a statement warning of the consequences for any such violation.

**Source:** Laws 1977, LB 72, § 2; Laws 1978, LB 748, § 37; Laws 1994, LB 886, § 14; Laws 1996, LB 1044, § 550; Laws 1997, LB 307, § 168; Laws 2005, LB 301, § 29.

## ARTICLE 7

### WOMEN'S HEALTH

#### Section

71-701. Women's Health Initiative of Nebraska; created; duties.

71-702. Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

71-703. Initiative; personnel; administrative support.

71-704. Funding intent.

71-705. Women's Health Initiative Fund; created; use; investment.

71-706. Department of Health and Human Services; powers.

71-707. Report.

#### **71-701 Women's Health Initiative of Nebraska; created; duties.**

The Women's Health Initiative of Nebraska is created within the Department of Health and Human Services. The Women's Health Initiative of Nebraska shall strive to improve the health of women in Nebraska by fostering the development of a comprehensive system of coordinated services, policy development, advocacy, and education. The initiative shall:

(1) Serve as a clearinghouse for information regarding women's health issues, including pregnancy, breast and cervical cancers, acquired immunodeficiency syndrome, osteoporosis, menopause, heart disease, smoking, and mental

health issues as well as other issues that impact women's health, including substance abuse, domestic violence, teenage pregnancy, sexual assault, adequacy of health insurance, access to primary and preventative health care, and rural and ethnic disparities in health outcomes;

(2) Perform strategic planning within the Department of Health and Human Services to develop department-wide plans for implementation of goals and objectives for women's health;

(3) Conduct department-wide policy analysis on specific issues related to women's health;

(4) Coordinate pilot projects and planning projects funded by the state that are related to women's health;

(5) Communicate and disseminate information and perform a liaison function within the department and to providers of health, social, educational, and support services to women;

(6) Provide technical assistance to communities, other public entities, and private entities for initiatives in women's health, including, but not limited to, community health assessment and strategic planning and identification of sources of funding and assistance with writing of grants; and

(7) Encourage innovative responses by public and private entities that are attempting to address women's health issues.

**Source:** Laws 2000, LB 480, § 1; Laws 2005, LB 301, § 30; Laws 2007, LB296, § 448.

**71-702 Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.**

(1) The Women's Health Initiative Advisory Council is created and shall consist of not more than thirty members, at least three-fourths of whom are women. At least one member shall be appointed from the following disciplines: (a) An obstetrician/gynecologist; (b) a nurse practitioner or physician's assistant from a rural community; (c) a geriatrics physician or nurse; (d) a pediatrician; (e) a community public health representative from each congressional district; (f) a health educator; (g) an insurance industry representative; (h) a mental health professional; (i) a representative from a statewide health volunteer agency; (j) a private health care industry representative; (k) an epidemiologist or a health statistician; (l) a foundation representative; and (m) a woman who is a health care consumer from each of the following age categories: Eighteen to thirty; thirty-one to forty; forty-one to sixty-five; and sixty-six and older. The membership shall also include a representative of the University of Nebraska Medical Center, a representative from Creighton University Medical Center, the chief medical officer if one is appointed under section 81-3115, and the Title V Administrator of the Department of Health and Human Services.

(2) The Governor shall appoint advisory council members and shall consider and attempt to balance representation based on political party affiliation, race, and different geographical areas of Nebraska when making appointments. The Governor shall appoint the first chairperson and vice-chairperson of the advisory council. There shall be two ex officio, nonvoting members from the Legislature, one of which shall be the chairperson of the Health and Human Services Committee.

(3) The terms of the initial members shall be as follows: One-third shall serve for one-year terms, one-third shall serve for two-year terms, and one-third shall serve for three-year terms including the members designated chairperson and vice-chairperson. Thereafter members shall serve for three-year terms. Members may not serve more than two consecutive three-year terms.

(4) The Governor shall make the appointments within three months after July 13, 2000.

(5) The advisory council shall meet quarterly the first two years. After this time the advisory council shall meet at least every six months or upon the call of the chairperson or a majority of the voting members. A quorum shall be one-half of the voting members.

(6) The members of the advisory council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the advisory council. Funds for reimbursement for expenses shall be from the Women's Health Initiative Fund.

(7) The advisory council shall advise the Women's Health Initiative of Nebraska in carrying out its duties under section 71-701 and may solicit private funds to support the initiative.

**Source:** Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449; Laws 2009, LB84, § 1; Laws 2009, LB154, § 16.

**71-703 Initiative; personnel; administrative support.**

The Department of Health and Human Services will determine how the department will provide personnel to carry out the Women's Health Initiative of Nebraska. The department shall employ personnel, including an executive director, necessary to carry out the powers and duties of the initiative. The Governor's Policy Research Office, the department, and other state agencies as necessary may provide administrative and technical support under the direct supervision of the Governor. The initiative may secure cooperation and assistance of other appropriate government and private-sector entities for women's health issues, programs, and educational materials.

**Source:** Laws 2000, LB 480, § 3; Laws 2005, LB 301, § 31; Laws 2007, LB296, § 450.

**71-704 Funding intent.**

The Legislature recognizes the generosity of its citizens and charitable organizations that donate their time and money to provide funds to their fellow citizens. It is the intent of the Legislature to permit the Women's Health Initiative of Nebraska to obtain and expend such funds to carry out the purposes of sections 71-701 to 71-707. Private citizens and charitable organizations may donate and grant funds to the Women's Health Initiative of Nebraska to pay for programs, educational materials, promotions, and other activities undertaken by the initiative.

**Source:** Laws 2000, LB 480, § 4.

**71-705 Women's Health Initiative Fund; created; use; investment.**

The Women's Health Initiative Fund is created. The fund shall consist of money received as gifts or grants or collected as fees or charges from any federal, state, public, or private source. Money in the fund shall be used to

reimburse the expenses of the Women's Health Initiative of Nebraska and expenses of members of the Women's Health Initiative Advisory Council. Nothing in sections 71-701 to 71-707 requires the Women's Health Initiative of Nebraska to accept any private donations that are not in keeping with the goals and objectives set forth by the initiative and the Department of Health and Human Services. No funds expended or received by or through the initiative shall pay for abortion referral or abortion services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2000, LB 480, § 5; Laws 2005, LB 301, § 32; Laws 2007, LB296, § 451.

**Cross References**

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

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

**71-706 Department of Health and Human Services; powers.**

The Department of Health and Human Services shall have all powers necessary to implement the purposes and intent of sections 71-701 to 71-707, including applying for, receiving, and administering federal and other public and private funds credited to the Women's Health Initiative Fund. Any funds obtained for the Women's Health Initiative of Nebraska shall be remitted to the State Treasurer for credit to the Women's Health Initiative Fund.

**Source:** Laws 2000, LB 480, § 6; Laws 2005, LB 301, § 33; Laws 2007, LB296, § 452.

**71-707 Report.**

The Department of Health and Human Services shall issue an annual report to the Governor and the Legislature on September 1 for the preceding fiscal year's activities of the Women's Health Initiative of Nebraska. The report submitted to the Legislature shall be submitted electronically. The report shall include progress reports on any programs, activities, or educational promotions that were undertaken by the initiative. The report shall also include a status report on women's health in Nebraska and any results achieved by the initiative.

**Source:** Laws 2000, LB 480, § 7; Laws 2005, LB 301, § 34; Laws 2007, LB296, § 453; Laws 2012, LB782, § 104.

**ARTICLE 8**

**BEHAVIORAL HEALTH SERVICES**

**Cross References**

**Abuse**, report required, see section 28-372.

**Admission when facilities are limited**, see section 83-338.

**Beatrice State Developmental Center**, see sections 83-217 to 83-227.02.

**Children's Behavioral Health Task Force**, see sections 43-4001 to 43-4003.

**Community Corrections Act**, see section 47-619.

**Cost of patient care**, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.

**Department of Health and Human Services**, official names of institutions under supervision, see section 83-107.01.

**Developmental Disabilities Court-Ordered Custody Act**, see section 71-1101.

**Developmental Disabilities Services Act**, see section 83-1201.

**Developmental disability regions**, see section 83-1,143.06.

**Division of Behavioral Health**, see sections 81-3113 and 81-3116.

**Division of Developmental Disabilities**, see sections 81-3113 and 81-3116.

**Hastings Correctional Behavioral Health Treatment Center**, see section 83-305.05.

**Health and Human Services Act**, see section 81-3110.  
**Health Care Facility Licensure Act**, see section 71-401.  
**Insurance coverage of mental health conditions**, see sections 44-791 to 44-795.  
**Mental Health Practice Act**, see section 38-2101.  
**Mistreatment of mentally ill person**, penalty, see section 83-356.  
**Nebraska Mental Health Commitment Act**, see section 71-901.  
**Nebraska Mental Health First Aid Training Act**, see section 71-3001.  
**Nebraska Prostitution Intervention and Treatment Act**, see section 71-2301.  
**Office of Juvenile Services**, behavioral health programs and services, see section 43-407.  
**Patient expenses**, see sections 83-348 to 83-355 and 83-363 to 83-380.01.  
**Persons supposed mentally ill**, limitations on restraint of liberty, see section 83-357.  
**Persons with an intellectual disability**, see sections 83-381 to 83-390.  
**Protection and advocacy system for persons with developmental disabilities or mentally ill individuals**, see sections 20-161 to 20-166.  
**Psychology Practice Act**, see section 38-3101.  
**Report of abuse**, required, see section 28-372.  
**Rural Behavioral Health Training and Placement Program Act**, see section 71-5680.  
**Sex Offender Commitment Act**, see section 71-1201.  
**Sex Offender Registration Act**, see section 29-4001.  
**State hospitals for the mentally ill**, see sections 83-305 to 83-357.  
**Uniform Controlled Substances Act**, see section 28-401.01.  
**Uniform Credentialing Act**, see section 38-101.  
**Veterans**, treatment, see section 80-601.  
**Victim notification**, see section 81-1850.

## Section

- 71-801. Nebraska Behavioral Health Services Act; act, how cited.
- 71-802. Purposes of act.
- 71-803. Public behavioral health system; purposes.
- 71-804. Terms, defined.
- 71-805. Division; personnel; office of consumer affairs.
- 71-806. Division; powers and duties; rules and regulations.
- 71-807. Behavioral health regions; established.
- 71-808. Regional behavioral health authority; established; regional governing board; matching funds; requirements.
- 71-809. Regional behavioral health authority; behavioral health services; powers and duties.
- 71-810. Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.
- 71-811. Division; funding; powers and duties.
- 71-812. Behavioral Health Services Fund; created; use; investment.
- 71-813. Repealed. Laws 2006, LB 994, § 162.
- 71-814. State Advisory Committee on Mental Health Services; created; members; duties.
- 71-815. State Advisory Committee on Substance Abuse Services; created; members; duties.
- 71-816. Repealed. Laws 2013, LB 6, § 16.
- 71-817. Transferred to section 9-1006.
- 71-818. Repealed. Laws 2009, LB 154, § 27.
- 71-819. Repealed. Laws 2006, LB 994, § 162.
- 71-820. Repealed. Laws 2006, LB 994, § 162.
- 71-821. Children and Family Behavioral Health Support Act; act, how cited.
- 71-822. Children and Family Support Hotline; establishment.
- 71-823. Family Navigator Program; establishment; evaluation.
- 71-824. Post-adoption and post-guardianship case management services; notice; administration; evaluation.
- 71-825. Repealed. Laws 2016, LB816, § 4.
- 71-826. Legislative intent regarding appropriations; allocation.
- 71-827. Repealed. Laws 2015, LB 8, § 4.
- 71-828. Behavioral Health Workforce Act; act, how cited.
- 71-829. Legislative findings.
- 71-830. Behavioral Health Education Center; created; administration; duties; report.
- 71-831. Contracts and agreements; department; duties.

**71-801 Nebraska Behavioral Health Services Act; act, how cited.**

Sections 71-801 to 71-831 shall be known and may be cited as the Nebraska Behavioral Health Services Act.

**Source:** Laws 2004, LB 1083, § 1; Laws 2006, LB 994, § 91; Laws 2009, LB154, § 17; Laws 2009, LB603, § 3; Laws 2012, LB1158, § 3.

#### **71-802 Purposes of act.**

The purposes of the Nebraska Behavioral Health Services Act are to: (1) Reorganize statutes relating to the provision of publicly funded behavioral health services; (2) provide for the organization and administration of the public behavioral health system within the department; (3) rename mental health regions as behavioral health regions; (4) provide for the naming of regional behavioral health authorities and ongoing activities of regional governing boards; (5) reorganize and rename the State Mental Health Planning and Evaluation Council and the State Alcoholism and Drug Abuse Advisory Committee; (6) change and add provisions relating to development of community-based behavioral health services and funding for behavioral health services; and (7) authorize the closure of regional centers.

**Source:** Laws 2004, LB 1083, § 2; Laws 2006, LB 994, § 92; Laws 2013, LB6, § 12.

#### **71-803 Public behavioral health system; purposes.**

The purposes of the public behavioral health system are to ensure:

(1) The public safety and the health and safety of persons with behavioral health disorders;

(2) Statewide access to behavioral health services, including, but not limited to, (a) adequate availability of behavioral health professionals, programs, and facilities, (b) an appropriate array of community-based services and continuum of care, and (c) integration and coordination of behavioral health services with primary health care services;

(3) High quality behavioral health services, including, but not limited to, (a) services that are research-based and consumer-focused, (b) services that emphasize beneficial treatment outcomes and recovery, with appropriate treatment planning, case management, community support, and consumer peer support, (c) appropriate regulation of behavioral health professionals, programs, and facilities, and (d) consumer involvement as a priority in all aspects of service planning and delivery; and

(4) Cost-effective behavioral health services, including, but not limited to, (a) services that are efficiently managed and supported with appropriate planning and information, (b) services that emphasize prevention, early detection, and early intervention, (c) services that are provided in the least restrictive environment consistent with the consumer's clinical diagnosis and plan of treatment, and (d) funding that is fully integrated and allocated to support the consumer and his or her plan of treatment.

**Source:** Laws 2004, LB 1083, § 3.

#### **71-804 Terms, defined.**

For purposes of the Nebraska Behavioral Health Services Act:

(1) Behavioral health disorder means mental illness or alcoholism, drug abuse, or other addictive disorder;

(2) Behavioral health region means a behavioral health region established in section 71-807;

(3) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;

(4) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;

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

(6) Director means the Director of Behavioral Health;

(7) Division means the Division of Behavioral Health of the department;

(8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and administered by the department, including behavioral health services provided under the medical assistance program;

(10) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(11) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

**Source:** Laws 2004, LB 1083, § 4; Laws 2006, LB 1248, § 74; Laws 2007, LB296, § 454; Laws 2013, LB6, § 13.

#### Cross References

Medical Assistance Act, see section 68-901.

#### **71-805 Division; personnel; office of consumer affairs.**

(1) The director shall appoint a chief clinical officer and a program administrator for consumer affairs for the division. The chief clinical officer shall be a board-certified psychiatrist and shall serve as the medical director for the division and all facilities and programs operated by the division. The program administrator for consumer affairs shall be a consumer or former consumer of behavioral health services and shall have specialized knowledge, experience, or expertise relating to consumer-directed behavioral health services, behavioral health delivery systems, and advocacy on behalf of consumers of behavioral health services and their families. The chief clinical officer and the program administrator for consumer affairs shall report to the director. The Governor and the director shall conduct a search for qualified candidates and shall solicit and consider recommendations from interested parties for such positions prior to making such appointments.

(2) The director shall establish and maintain an office of consumer affairs within the division. The program administrator for consumer affairs shall be responsible for the administration and management of the office.

**Source:** Laws 2004, LB 1083, § 5; Laws 2007, LB296, § 455.

#### **71-806 Division; powers and duties; rules and regulations.**



(1) The division shall act as the chief behavioral health authority for the State of Nebraska and shall direct the administration and coordination of the public behavioral health system, including, but not limited to: (a) Administration and management of the division, regional centers, and any other facilities and programs operated by the division; (b) integration and coordination of the public behavioral health system; (c) comprehensive statewide planning for the provision of an appropriate array of community-based behavioral health services and continuum of care; (d) coordination and oversight of regional behavioral health authorities, including approval of regional budgets and audits of regional behavioral health authorities; (e) development and management of data and information systems; (f) prioritization and approval of all expenditures of funds received and administered by the division, including: The establishment of rates to be paid; reimbursement methodologies for behavioral health services; methodologies to be used by regional behavioral health authorities in determining a consumer's financial eligibility as provided in subsection (2) of section 71-809; and fees and copays to be paid by consumers of such services; (g) cooperation with the department in the licensure and regulation of behavioral health professionals, programs, and facilities; (h) cooperation with the department in the provision of behavioral health services under the medical assistance program; (i) audits of behavioral health programs and services; (j) promotion of activities in research and education to improve the quality of behavioral health services, recruitment and retention of behavioral health professionals, and access to behavioral health programs and services; and (k) establishment of standards for peer services, including standards for training programs and for training, certification of, and service delivery by individuals.

(2) The department shall adopt and promulgate rules and regulations to carry out the Nebraska Behavioral Health Services Act.

**Source:** Laws 2004, LB 1083, § 6; Laws 2006, LB 1248, § 75; Laws 2007, LB296, § 456; Laws 2012, LB871, § 1; Laws 2017, LB417, § 10.

#### **71-807 Behavioral health regions; established.**

Six behavioral health regions are established, consisting of the following counties:

(1) Region 1 shall consist of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel counties;

(2) Region 2 shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dawson, Gosper, Dundy, Hitchcock, and Red Willow counties;

(3) Region 3 shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Hamilton, Merrick, Franklin, Webster, and Nuckolls counties;

(4) Region 4 shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Dakota, Thurston, Wayne, Pierce, Antelope, Boone, Nance, Madison, Stanton, Cuming, Burt, Colfax, and Platte counties;

(5) Region 5 shall consist of Polk, Butler, Saunders, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, York, and Richardson counties; and

(6) Region 6 shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties.

**Source:** Laws 2004, LB 1083, § 7.

**71-808 Regional behavioral health authority; established; regional governing board; matching funds; requirements.**

(1) A regional behavioral health authority shall be established in each behavioral health region by counties acting under provisions of the Interlocal Cooperation Act. Each regional behavioral health authority shall be governed by a regional governing board consisting of one county board member from each county in the region. Board members shall serve for staggered terms of three years and until their successors are appointed and qualified. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The regional governing board shall appoint a regional administrator who shall be responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority shall encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the region and shall coordinate such activities with the office of consumer affairs within the division. Each regional behavioral health authority shall establish and utilize a regional advisory committee consisting of consumers, providers, and other interested parties and may establish and utilize such other task forces, subcommittees, or other committees as it deems necessary and appropriate to carry out its duties under this section.

(3) Each county in a behavioral health region shall provide funding for the operation of the behavioral health authority and for the provision of behavioral health services in the region. The total amount of funding provided by counties under this subsection shall be equal to one dollar for every three dollars from the General Fund. The division shall annually certify the total amount of county matching funds to be provided. At least forty percent of such amount shall consist of local and county tax revenue, and the remainder shall consist of other nonfederal sources. The regional governing board of each behavioral health authority, in consultation with all counties in the region, shall determine the amount of funding to be provided by each county under this subsection. Any General Funds transferred from regional centers for the provision of community-based behavioral health services after July 1, 2004, and funds received by a regional behavioral health authority for the provision of behavioral health services to children under section 71-826 shall be excluded from any calculation of county matching funds under this subsection.

**Source:** Laws 2004, LB 1083, § 8; Laws 2009, LB603, § 4.

**Cross References**

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

**71-809 Regional behavioral health authority; behavioral health services; powers and duties.**

(1) Each regional behavioral health authority shall be responsible for the development and coordination of publicly funded behavioral health services within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department, including, but not limited to, (a) adminis-

tration and management of the regional behavioral health authority, (b) integration and coordination of the public behavioral health system within the behavioral health region, (c) comprehensive planning for the provision of an appropriate array of community-based behavioral health services and continuum of care for the region, (d) submission for approval by the division of an annual budget and a proposed plan for the funding and administration of publicly funded behavioral health services within the region, (e) submission of annual reports and other reports as required by the division, (f) initiation and oversight of contracts for the provision of publicly funded behavioral health services, and (g) coordination with the division in conducting audits of publicly funded behavioral health programs and services.

(2) Each regional behavioral health authority shall adopt a policy for use in determining the financial eligibility of all consumers and shall adopt a uniform schedule of fees and copays, based on the policy and schedule developed by the division, to be assessed against consumers utilizing community-based behavioral health services in the region. The methods used to determine the financial eligibility of all consumers shall take into account taxable income, the number of family members dependent on the consumer's income, liabilities, and other factors as determined by the division. The policy and the schedule of fees and copays shall be approved by the regional governing board and included with the budget plan submitted to the division annually. Providers shall charge fees consistent with the schedule of fees and copays in accordance with the financial eligibility of all consumers but not in excess of the actual cost of the service. Each regional behavioral health authority shall assure that its policy and schedule of fees and copays are applied uniformly by the providers in the region.

(3) Except for services being provided by a regional behavioral health authority on July 1, 2004, under applicable state law in effect prior to such date, no regional behavioral health authority shall provide behavioral health services funded in whole or in part with revenue received and administered by the division under the Nebraska Behavioral Health Services Act unless:

- (a) There has been a public competitive bidding process for such services;
- (b) There are no qualified and willing providers to provide such services; and
- (c) The regional behavioral health authority receives written authorization from the director and enters into a contract with the division to provide such services.

(4) Each regional behavioral health authority shall comply with all applicable rules and regulations of the department relating to the provision of behavioral health services by such authority, including, but not limited to, rules and regulations which (a) establish definitions of conflicts of interest for regional behavioral health authorities and procedures in the event such conflicts arise, (b) establish uniform and equitable public bidding procedures for such services, and (c) require each regional behavioral health authority to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of such services.

**Source:** Laws 2004, LB 1083, § 9; Laws 2007, LB296, § 457; Laws 2012, LB871, § 2.

**71-810 Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.**

(1) The division shall encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for the purposes of (a) providing greater access to such services and improved outcomes for consumers of such services and (b) reducing the necessity and demand for regional center behavioral health services.

(2) The division may reduce or discontinue regional center behavioral health services only if (a) appropriate community-based services or other regional center behavioral health services are available for every person receiving the regional center services that would be reduced or discontinued, (b) such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at such regional center, and (c) no further commitments, admissions, or readmissions for such services are required due to the availability of community-based services or other regional center services to replace such services.

(3) The division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services under this section. The notification submitted to the Legislature shall be submitted electronically. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services.

(4) As regional center services are reduced or discontinued under this section, the division shall make appropriate corresponding reductions in regional center personnel and other expenditures related to the provision of such services. All funding related to the provision of regional center services that are reduced or discontinued under this section shall be reallocated and expended by the division for purposes related to the statewide development and provision of community-based services.

(5) The division may establish state-operated community-based services to replace regional center services that are reduced or discontinued under this section. The division shall provide regional center employees with appropriate training and support to transition such employees into positions as may be necessary for the provision of such state-operated services.

(6) The provisions of this section are self-executing and require no further authorization or other enabling legislation.

**Source:** Laws 2004, LB 1083, § 10; Laws 2005, LB 551, § 3; Laws 2008, LB928, § 17; Laws 2009, LB154, § 18; Laws 2012, LB782, § 105; Laws 2017, LB417, § 11.

**71-811 Division; funding; powers and duties.**

The division shall coordinate the integration and management of all funds appropriated by the Legislature or otherwise received by the department from any other public or private source for the provision of behavioral health services to ensure the statewide availability of an appropriate array of community-based behavioral health services and continuum of care and the allocation of such funds to support the consumer and his or her plan of treatment.

**Source:** Laws 2004, LB 1083, § 11; Laws 2007, LB296, § 458.

**71-812 Behavioral Health Services Fund; created; use; investment.**

(1) The Behavioral Health Services Fund is created. The fund shall be administered by the division and shall contain cash funds appropriated by the Legislature or otherwise received by the department for the provision of behavioral health services from any other public or private source and directed by the Legislature for credit to the fund.

(2) The fund shall be used to encourage and facilitate the statewide development and provision of community-based behavioral health services, including, but not limited to, (a) the provision of grants, loans, and other assistance for such purpose and (b) reimbursement to providers of such services.

(3)(a) Money transferred to the fund under section 76-903 shall be used for housing-related assistance for very low-income adults with serious mental illness, except that if the division determines that all housing-related assistance obligations under this subsection have been fully satisfied, the division may distribute any excess, up to twenty percent of such money, to regional behavioral health authorities for acquisition or rehabilitation of housing to assist such persons. The division shall manage and distribute such funds based upon a formula established by the division, in consultation with regional behavioral health authorities and the department, in a manner consistent with and reasonably calculated to promote the purposes of the public behavioral health system enumerated in section 71-803. The division shall contract with each regional behavioral health authority for the provision of such assistance. Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such assistance.

(b) For purposes of this subsection:

(i) Adult with serious mental illness means a person eighteen years of age or older who has, or at any time during the immediately preceding twelve months has had, a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and which has resulted in functional impairment that substantially interferes with or limits one or more major life functions. Serious mental illness does not include DSM V codes, substance abuse disorders, or developmental disabilities unless such conditions exist concurrently with a diagnosable serious mental illness;

(ii) Housing-related assistance includes rental payments, utility payments, security and utility deposits, and other related costs and payments; and

(iii) Very low-income means a household income of fifty percent or less of the applicable median family income estimate as established by the United States Department of Housing and Urban Development.

(4) 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 2004, LB 1083, § 12; Laws 2005, LB 40, § 5; Laws 2007, LB296, § 459.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.  
 Nebraska State Funds Investment Act, see section 72-1260.

**71-813 Repealed. Laws 2006, LB 994, § 162.****71-814 State Advisory Committee on Mental Health Services; created; members; duties.**

(1) The State Advisory Committee on Mental Health Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of mental health services in the State of Nebraska. The committee shall consist of twenty-three members appointed by the Governor as follows: (a) One regional governing board member, (b) one regional administrator, (c) twelve consumers of behavioral health services or their family members, (d) two providers of behavioral health services, (e) two representatives from the State Department of Education, including one representative from the Division of Vocational Rehabilitation of the State Department of Education, (f) three representatives from the Department of Health and Human Services representing mental health, social services, and medicaid, (g) one representative from the Nebraska Commission on Law Enforcement and Criminal Justice, and (h) one representative from the Housing Office of the Community and Rural Development Division of the Department of Economic Development.

(2) The committee shall be responsible to the division and shall (a) serve as the state's mental health planning council as required by Public Law 102-321, (b) conduct regular meetings, (c) provide advice and assistance to the division relating to the provision of mental health services in the State of Nebraska, including, but not limited to, the development, implementation, provision, and funding of organized peer support services, (d) promote the interests of consumers and their families, including, but not limited to, their inclusion and involvement in all aspects of services design, planning, implementation, provision, education, evaluation, and research, (e) provide reports as requested by the division, and (f) engage in such other activities as directed or authorized by the division.

**Source:** Laws 2004, LB 1083, § 14; Laws 2006, LB 994, § 93; Laws 2007, LB296, § 460.

**71-815 State Advisory Committee on Substance Abuse Services; created; members; duties.**

(1) The State Advisory Committee on Substance Abuse Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of substance abuse services in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor and shall include at least three consumers of substance abuse services.

(2) The committee shall be responsible to the division and shall (a) conduct regular meetings, (b) provide advice and assistance to the division relating to the provision of substance abuse services in the State of Nebraska, (c) promote the interests of consumers and their families, (d) provide reports as requested by the division, and (e) engage in such other activities as directed or authorized by the division.

**Source:** Laws 2004, LB 1083, § 15; Laws 2005, LB 551, § 5; Laws 2006, LB 994, § 94.

**71-816 Repealed. Laws 2013, LB 6, § 16.**

**71-817 Transferred to section 9-1006.**

**71-818 Repealed. Laws 2009, LB 154, § 27.**

**71-819 Repealed. Laws 2006, LB 994, § 162.**

**71-820 Repealed. Laws 2006, LB 994, § 162.**

**71-821 Children and Family Behavioral Health Support Act; act, how cited.**

Sections 71-821 to 71-826 shall be known and may be cited as the Children and Family Behavioral Health Support Act.

**Source:** Laws 2009, LB603, § 5; Laws 2015, LB8, § 2.

**71-822 Children and Family Support Hotline; establishment.**

No later than January 1, 2010, the department shall establish a Children and Family Support Hotline which shall:

- (1) Be a single point of access for children's behavioral health triage through the operation of a twenty-four-hour-per-day, seven-day-per-week telephone line;
- (2) Be administered by the division and staffed by trained personnel under the direct supervision of a qualified mental health, behavioral health, or social work professional engaged in activities of mental health treatment;
- (3) Provide screening and assessment;
- (4) Provide referral to existing community-based resources; and
- (5) Be evaluated. The evaluation shall include, but not be limited to, the county of the caller, the reliability and consistency of the information given, an analysis of services needed or requested, and the degree to which the caller reports satisfaction with the referral service.

**Source:** Laws 2009, LB603, § 6.

**71-823 Family Navigator Program; establishment; evaluation.**

(1) No later than January 1, 2010, the department shall establish a Family Navigator Program to respond to children's behavioral health needs. The program shall be administered by the division and consist of individuals trained and compensated by the department who, at a minimum, shall:

- (a) Provide peer support; and
- (b) Provide connection to existing services, including the identification of community-based services.

(2) The Family Navigator Program shall be evaluated. The evaluation shall include, but not be limited to, an assessment of the quality of the interactions with the program and the effectiveness of the program as perceived by the family, whether the family followed through with the referral recommendations, the availability and accessibility of services, the waiting time for services, and cost and distance factors.

**Source:** Laws 2009, LB603, § 7.

**71-824 Post-adoption and post-guardianship case management services; notice; administration; evaluation.**

No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, until the former state ward attains nineteen years of age, or until extended guardianship assistance payments and medical care are terminated pursuant to section 43-4511, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

**Source:** Laws 2009, LB603, § 8; Laws 2014, LB908, § 9; Laws 2015, LB243, § 25.

**71-825 Repealed. Laws 2016, LB816, § 4.**

**71-826 Legislative intent regarding appropriations; allocation.**

It is the intent of the Legislature to appropriate from the General Fund five hundred thousand dollars for fiscal year 2009-10 and one million dollars for fiscal year 2010-11 to the Department of Health and Human Services — Behavioral Health, Program 38, Behavioral Health Aid, for behavioral health services for children under the Nebraska Behavioral Health Services Act, including, but not limited to, the expansion of the Professional Partner Program and services provided using a sliding-fee schedule. General Funds appropriated pursuant to this section shall be excluded from the calculation of county matching funds under subsection (3) of section 71-808, shall be allocated to the regional behavioral health authorities, and shall be distributed based on the 2008 allocation formula. For purposes of this section, children means Nebraska residents under nineteen years of age.

**Source:** Laws 2009, LB603, § 10.

**71-827 Repealed. Laws 2015, LB 8, § 4.**

**71-828 Behavioral Health Workforce Act; act, how cited.**

Sections 71-828 to 71-830 shall be known and may be cited as the Behavioral Health Workforce Act.

**Source:** Laws 2009, LB603, § 12.

**71-829 Legislative findings.**

The Legislature finds that there are insufficient behavioral health professionals in the Nebraska behavioral health workforce and further that there are insufficient behavioral health professionals trained in evidence-based practice. This workforce shortage leads to inadequate accessibility and response to the behavioral health needs of Nebraskans of all ages: Children; adolescents; and adults. These shortages have led to well-documented problems of consumers



waiting for long periods of time in inappropriate settings because appropriate placement and care is not available. As a result, mentally ill patients end up in hospital emergency rooms which are the most expensive level of care or are incarcerated and do not receive adequate care, if any.

As the state moves from institutional to community-based behavioral health services, the behavioral health services workforce shortage is increasingly felt by the inability to hire and retain behavioral health professionals in Nebraska. In Laws 2004, LB 1083, the Legislature pledged to “promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services”. The purpose of the Behavioral Health Workforce Act is to realize the commitment made in LB 1083 to improve community-based behavioral health services for Nebraskans and thus focus on addressing behavioral health issues before they become a crisis through increasing the number of behavioral health professionals and train these professionals in evidence-based practice and alternative delivery methods which will improve the quality of care, including utilizing the existing infrastructure and telehealth services which will expand outreach to more rural areas in Nebraska.

**Source:** Laws 2009, LB603, § 13.

**71-830 Behavioral Health Education Center; created; administration; duties; report.**

(1) The Behavioral Health Education Center is created and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a)(i) Provide funds for two additional medical residents in a Nebraska-based psychiatry program each year starting in 2010 until a total of eight additional psychiatry residents are added in 2013. The center shall provide psychiatric residency training experiences that serve rural Nebraska and other underserved areas. As part of his or her residency training experiences, each center-funded resident shall participate in the rural training for a minimum of one year. A minimum of two of the eight center-funded residents shall be active in the rural training each year; and

(ii) Provide funds for five one-year doctoral-level psychology internships in Nebraska within twelve months after July 18, 2014, and every year thereafter and increase the number of interns in the program to ten within thirty-six months after July 18, 2014. The interns shall be placed in communities so as to increase access to behavioral health services for patients residing in rural and underserved areas of Nebraska;

(b) Focus on the training of behavioral health professionals in telehealth techniques, including taking advantage of a telehealth network that exists, and other innovative means of care delivery in order to increase access to behavioral health services for all Nebraskans;

(c) Analyze the geographic and demographic availability of Nebraska behavioral health professionals, including psychiatrists, social workers, community rehabilitation workers, psychologists, substance abuse counselors, licensed mental health practitioners, behavioral analysts, peer support providers, pri-

mary care physicians, nurses, nurse practitioners, pharmacists, and physician assistants;

(d) Prioritize the need for additional professionals by type and location;

(e) Establish learning collaborative partnerships with other higher education institutions in the state, hospitals, law enforcement, community-based agencies, and consumers and their families in order to develop evidence-based, recovery-focused, interdisciplinary curricula and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curricula and training shall address the identified priority needs for behavioral health professionals; and

(f) Beginning in 2011, develop two interdisciplinary behavioral health training sites each year until a total of six sites have been developed. Four of the six sites shall be in counties with a population of fewer than fifty thousand inhabitants. Each site shall provide annual interdisciplinary training opportunities for a minimum of three behavioral health professionals.

(3) No later than December 1 of every odd-numbered year, the center shall prepare a report of its activities under the Behavioral Health Workforce Act. The report shall be filed electronically with the Clerk of the Legislature and shall be provided electronically to any member of the Legislature upon request.

**Source:** Laws 2009, LB603, § 14; Laws 2012, LB782, § 109; Laws 2014, LB901, § 1.

#### **71-831 Contracts and agreements; department; duties.**

All contracts and agreements relating to the medical assistance program governing at-risk managed care service delivery for behavioral health services entered into by the department on or after July 21, 2016, shall:

(1) Provide a definition and cap on administrative spending such that (a) administrative expenditures do not include profit greater than the contracted amount, (b) any administrative spending is necessary to improve the health status of the population to be served, and (c) administrative expenditures do not include contractor incentives. Administrative spending shall not under any circumstances exceed twelve percent. Such spending shall be tracked by the contractor and reported to the department quarterly;

(2) Provide a definition of annual contractor profits and losses and restrict such profits and losses under the contract so that profit shall not exceed a percentage specified by the department but not more than three percent per year as a percentage of the aggregate of all income and revenue earned by the contractor and related parties, including parent and subsidiary companies and risk-bearing partners, under the contract;

(3) Provide for reinvestment of (a) any remittance if the contractor does not meet the minimum medical loss ratio, (b) performance contingencies imposed by the department, and (c) any unearned incentive funds, to fund additional health services for children, families, and adults according to a plan developed with input from stakeholders and approved by the department. Such plan shall address the health needs of adults and children, including filling service gaps and providing system improvements;

(4) Provide for a minimum medical loss ratio of eighty-five percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(5) Provide that contractor incentives, in addition to potential profit, be up to two percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract; and

(6) Be reviewed and awarded competitively and in full compliance with the procurement requirements of the State of Nebraska.

**Source:** Laws 2012, LB1158, § 2; Laws 2016, LB1011, § 1.

**ARTICLE 9**

**NEBRASKA MENTAL HEALTH COMMITMENT ACT**

**Cross References**

- Abuse**, report required, see section 28-372.
- Admission when facilities are limited**, see section 83-338.
- Beatrice State Developmental Center**, see sections 83-217 to 83-227.02.
- Behavioral Health Workforce Act**, see section 71-828.
- Blanks for warrants, certificates, and other forms**, see section 83-336.
- Children and Family Behavioral Health Support Act**, see section 71-821.
- Children’s Behavioral Health Task Force**, see sections 43-4001 to 43-4003.
- Community Corrections Act**, see section 47-619.
- Cost of patient care**, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
- Department of Health and Human Services**, official names of institutions under supervision, see section 83-107.01.
- Developmental Disabilities Court-Ordered Custody Act**, see section 71-1101.
- Division of Behavioral Health**, see sections 81-3113 and 81-3116.
- Health and Human Services Act**, see section 81-3110.
- Health Care Facility Licensure Act**, see section 71-401.
- Insurance coverage of mental health conditions**, see sections 44-791 to 44-795.
- Interstate Compact on Mental Health**, see section 83-801.
- Jails**, regulations relating to, see Chapter 47.
- Mental Health Practice Act**, see section 38-2101.
- Mistreatment of mentally ill person**, penalty, see section 83-356.
- Nebraska Behavioral Health Services Act**, see section 71-801.
- Office of Juvenile Services**, behavioral health programs and services, see section 43-407.
- Patient expenses**, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
- Persons supposed mentally ill**, limitations on restraint of liberty, see section 83-357.
- Persons with an intellectual disability**, see sections 83-381 to 83-390.
- Protection and advocacy system for mentally ill individuals**, see sections 20-161 to 20-166.
- Psychology Practice Act**, see section 38-3101.
- Report of abuse**, required, see section 28-372.
- Rural Behavioral Health Training and Placement Program Act**, see section 71-5680.
- Sex Offender Commitment Act**, see section 71-1201.
- Sex Offender Registration Act**, see section 29-4001.
- State hospitals for the mentally ill**, see sections 83-305 to 83-357.
- Uniform Controlled Substances Act**, see section 28-401.01.
- Uniform Credentialing Act**, see section 38-101.
- Veterans**, treatment, see section 80-601.
- Victim notification**, see section 81-1850.

**Section**

- 71-901. Act, how cited.
- 71-902. Declaration of purpose.
- 71-903. Definitions, where found.
- 71-904. Administrator, defined.
- 71-904.01. Firearm-related disability, defined.
- 71-905. Mental health board, defined.
- 71-906. Mental health professional, defined.
- 71-907. Mentally ill, defined.
- 71-908. Mentally ill and dangerous person, defined.
- 71-909. Outpatient treatment, defined.
- 71-910. Peace officer or law enforcement officer, defined.
- 71-911. Regional center, defined.
- 71-912. Subject, defined.
- 71-913. Substance dependent, defined.
- 71-914. Treatment facility, defined.

## PUBLIC HEALTH AND WELFARE

- Section  
71-915. Mental health boards; created; powers; duties; compensation.  
71-916. Mental health board; training; department; duties.  
71-917. Clerk of the district court; duties relating to mental health board.  
71-918. Facility or programs for treatment of mental illness, substance dependence, or personality disorders; voluntary admission; unconditional discharge; exception.  
71-919. Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional.  
71-920. Mentally ill and dangerous person; certificate of mental health professional; contents.  
71-921. Person believes another to be a mentally ill and dangerous person; notify county attorney; petition; when.  
71-922. Mental health board proceedings; commencement; custody; conditions; dismissal; when.  
71-923. Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.  
71-924. Hearing; mental health board; duties.  
71-925. Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.  
71-926. Subject; custody pending entry of treatment order.  
71-927. Mentally ill and dangerous subject; board; issue warrant; contents; immunity.  
71-928. Inpatient treatment; subject taken to facility; procedure.  
71-929. Mental health board; execution of warrants; costs; procedure.  
71-930. Treatment order of mental health board; appeal; final order of district court; appeal.  
71-931. Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.  
71-932. Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.  
71-933. Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.  
71-934. Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.  
71-935. Mental health board; review hearing; order discharge or change treatment disposition; when.  
71-936. Regional center or treatment facility; administrator; discharge of involuntary patient; notice.  
71-937. Mental health board; notice of release; hearing.  
71-938. Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.  
71-939. Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.  
71-940. Person with mental illness or substance dependence; committed under other state's laws; return to other state; procedure; warrant issued.  
71-941. Person with mental illness or substance dependence; arrested under warrant; notice; rights; writ of habeas corpus; hearing.  
71-942. Person with mental illness, substance dependence, or personality disorder; dangerous sex offender; located outside state; demand return; procedure.  
71-943. Subjects' rights during proceedings against them.  
71-944. Subject's rights; written notice of the time and place of hearing; reasons alleged for treatment; procedure.  
71-945. Subject's rights; representation by counsel; appointment of counsel if indigent.  
71-946. Appointment of counsel; procedure.  
71-947. Appointed counsel; fees; reimbursement of costs incurred; procedure.  
71-948. Subject's rights; independent evaluation and assistance in proceedings; fees and expenses.  
71-949. Counsel for subject; rights; enumerated; discovery; appeal from denial of discovery; when.  
71-950. Continuances; liberally granted.

Section	
71-951.	Mental health board hearings; closed to public; exception; where conducted.
71-952.	Subject's rights; appear in person and testify in own behalf; present witnesses and evidence.
71-953.	Subject's rights; compulsory process to obtain testimony of witnesses.
71-954.	Subject's rights; confront and cross-examine adverse witnesses and evidence.
71-955.	Hearings; rules of evidence applicable.
71-956.	Subject's rights; written statements; contents.
71-957.	Proceedings shall be of record; reporter; expenses and fees.
71-958.	Qualified mental health professional; provide medical treatment to subject; when.
71-959.	Subject in custody or receiving treatment; rights; enumerated.
71-960.	Subject; waive rights; manner.
71-961.	Subject's records; confidential; exceptions.
71-962.	Violations; penalty.
71-963.	Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.

#### **71-901 Act, how cited.**

Sections 71-901 to 71-963 shall be known and may be cited as the Nebraska Mental Health Commitment Act.

**Source:** Laws 1976, LB 806, § 89; Laws 1988, LB 257, § 6; Laws 1994, LB 498, § 12; Laws 1996, LB 1155, § 116; R.S.1943, (1999), § 83-1078; Laws 2004, LB 1083, § 21; Laws 2011, LB512, § 5.

#### **71-902 Declaration of purpose.**

The purpose of the Nebraska Mental Health Commitment Act is to provide for the treatment of persons who are mentally ill and dangerous. It is the public policy of the State of Nebraska that mentally ill and dangerous persons be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Nebraska Mental Health Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

**Source:** Laws 1976, LB 806, § 1; Laws 1996, LB 1155, § 93; R.S.1943, (1999), § 83-1001; Laws 2004, LB 1083, § 22.

#### **Cross References**

**Persons supposed mentally ill**, limitations on restraint of liberty, see section 83-357.

The Nebraska Mental Health Commitment Act applies to any person who is mentally ill and dangerous. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

One of the declared public policy purposes of the Nebraska Mental Health Commitment Act is that all personal records

required by the act shall be confidential except as otherwise specifically provided. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

#### **71-903 Definitions, where found.**

For purposes of the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections 71-904 to 71-914 shall apply.

**Source:** Laws 1976, LB 806, § 2; Laws 1994, LB 498, § 4; R.S.1943, (1999), § 83-1002; Laws 2004, LB 1083, § 23; Laws 2011, LB512, § 6.

**71-904 Administrator, defined.**

Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee.

**Source:** Laws 1976, LB 806, § 5; R.S.1943, (1999), § 83-1005; Laws 2004, LB 1083, § 24.

**71-904.01 Firearm-related disability, defined.**

Firearm-related disability means a person is not permitted to (1) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (2) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (3) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act.

**Source:** Laws 2011, LB512, § 7.

**Cross References**

**Concealed Handgun Permit Act**, see section 69-2427.

**71-905 Mental health board, defined.**

Mental health board means a board created under section 71-915.

**Source:** Laws 1976, LB 806, § 4; R.S.1943, (1999), § 83-1004; Laws 2004, LB 1083, § 25.

**71-906 Mental health professional, defined.**

Mental health professional means a person licensed to practice medicine and surgery or psychology in this state under the Psychology Interjurisdictional Compact or the Uniform Credentialing Act or an advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Practice Act who has proof of current certification in a psychiatric or mental health specialty.

**Source:** Laws 1976, LB 806, § 10; Laws 1991, LB 10, § 6; Laws 1994, LB 1210, § 159; R.S.1943, (1999), § 83-1010; Laws 2004, LB 1083, § 26; Laws 2005, LB 534, § 1; Laws 2007, LB463, § 1185; Laws 2018, LB1034, § 59.  
Effective date July 19, 2018.

**Cross References**

**Advanced Practice Registered Nurse Practice Act**, see section 38-201.

**Psychology Interjurisdictional Compact**, see section 38-3901.

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

The opinion of a general practitioner of medicine as to mental conditions is admissible in commitment proceedings, provided a proper foundation is laid. *Lux v. Mental Health Board of Polk County*, 202 Neb. 106, 274 N.W.2d 141 (1979).

**71-907 Mentally ill, defined.**

Mentally ill means having a psychiatric disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

**Source:** Laws 1977, LB 204, § 27; R.S.1943, (1999), § 83-1009.01; Laws 2004, LB 1083, § 27.

Substance dependence can be considered for purposes of determining that an individual is a dangerous sex offender. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

### 71-908 Mentally ill and dangerous person, defined.

Mentally ill and dangerous person means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents:

(1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or

(2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

**Source:** Laws 1976, LB 806, § 9; Laws 1977, LB 204, § 26; Laws 1985, LB 252, § 2; R.S.1943, (1999), § 83-1009; Laws 2004, LB 1083, § 28.

1. Requirements of section
2. Evidentiary issues
3. Standard of proof
4. Constitutionality
5. Appeal

#### 1. Requirements of section

Involuntary commitment as a mentally ill dangerous person is improper when, although a person is clearly mentally ill, there is no showing of dangerousness. *Petersen v. County Board of Mental Health*, 203 Neb. 622, 279 N.W.2d 844 (1979).

Showing that a person is a spendthrift and improvident is insufficient to demonstrate dangerousness as required by this statute. *Petersen v. County Board of Mental Health*, 203 Neb. 622, 279 N.W.2d 844 (1979).

The requirements of this section, which defines a mentally ill dangerous person, are met when medical diagnoses of paranoid schizophrenia and an unprovoked assault and threatening behavior are shown by clear and convincing proof. *Lux v. Mental Health Board of Polk County*, 202 Neb. 106, 274 N.W.2d 141 (1979).

Before a person may be committed for treatment by a mental health board, the board must determine that the person meets the definition of a mentally ill and dangerous person as set forth herein. In re *Interest of Verle O.*, 13 Neb. App. 256, 691 N.W.2d 177 (2005).

#### 2. Evidentiary issues

There is no definite time-oriented period to determine whether an act is recent for the purposes of this section. Each case must be decided on the basis of the surrounding facts and circumstances. In re *Interest of Kochner*, 266 Neb. 114, 662 N.W.2d 195 (2003).

To meet the definition of a mentally ill dangerous person, the State must show that the person suffers from a mental illness and that the person presents a substantial risk of harm to others or to himself or herself. In re *Interest of Kochner*, 266 Neb. 114, 662 N.W.2d 195 (2003).

A person who is mentally retarded does not fall within the definition of "mentally ill dangerous person" unless there is a secondary diagnosis of mental illness. In re *Interest of Wickwire*, 259 Neb. 305, 609 N.W.2d 384 (2000).

Actions and statements of a person alleged to be mentally ill and dangerous which occur prior to the hearing are probative of the subject's present mental condition. However, in order for a

past act to have any evidentiary value, it must form some foundation for a prediction of future dangerousness and be, therefore, probative of that issue. In re *Interest of Rasmussen*, 236 Neb. 572, 462 N.W.2d 621 (1990).

In proving the dangerousness of a mentally ill person as manifested by "evidence of inability to provide for his basic human needs," within the meaning of this section, expert testimony may be used to prove such a condition. In re *Interest of Kinnebrew*, 224 Neb. 885, 402 N.W.2d 264 (1987).

An act occurring five years prior to the mental health commitment hearing is recent within the meaning of this section where: (a) There is evidence that the act is still probative of the subject's future dangerousness; (b) the subject has not had an opportunity to commit a more recent act because he has been in confinement; and (c) there is reliable medical evidence that there is a high probability of repetition of such act by the subject. Under Mental Health Commitment Act, the determination of whether an act of violence is recent must be decided on the basis of all the surrounding facts and circumstances. In re *Interest of Blythman*, 208 Neb. 51, 302 N.W.2d 666 (1981).

An act or threat is "recent" within the meaning of this section, if the time interval between it and the hearing of the mental health board is not greater than that which would indicate processing of the complaint was carried on with reasonable diligence under the circumstances existing having due regard for the rights and welfare of the alleged mentally ill dangerous person and the protection of society in general. *Hill v. County Board of Mental Health, Douglas County*, 203 Neb. 610, 279 N.W.2d 838 (1979).

Although this section refers to "recent violent acts," commitment may be based upon evidence of only one violent act or threat. *Lux v. Mental Health Board of Polk County*, 202 Neb. 106, 274 N.W.2d 141 (1979).

Pursuant to subdivision (1) of this section, acts committed over 10 years prior to the filing of the petition seeking commitment can still be sufficiently recent to be probative on the issue of dangerousness where the subject's lengthy incarceration prevented him from committing a more recent act and where the

subject had not completed any offense-specific treatment while incarcerated. In re Interest of Michael U., 14 Neb. App. 918, 720 N.W.2d 403 (2006).

### 3. Standard of proof

The State must prove by clear and convincing evidence that an individual poses a substantial risk of harm to others or to himself to have that individual declared mentally ill and dangerous under the Nebraska Mental Health Commitment Act. In re Interest of Dickson, 238 Neb. 148, 469 N.W.2d 357 (1991).

Evidence must be clear and convincing to support a finding that a person is mentally ill and dangerous. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

### 4. Constitutionality

The definitions of mentally ill dangerous persons in the Nebraska Mental Health Commitment Act and the statutes governing persons acquitted of a crime on grounds of insanity are constitutional and do not violate equal protection guarantees. Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991).

### 5. Appeal

An order adjudicating an individual as a mentally ill dangerous person pursuant to this section and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

## 71-909 Outpatient treatment, defined.

Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (1) taking prescribed medication, (2) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (3) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs.

**Source:** Laws 1994, LB 498, § 5; R.S.1943, (1999), § 83-1007.01; Laws 2004, LB 1083, § 29.

## 71-910 Peace officer or law enforcement officer, defined.

Peace officer or law enforcement officer means a sheriff, a jailer, a marshal, a police officer, or an officer of the Nebraska State Patrol.

**Source:** Laws 1976, LB 806, § 11; Laws 1981, LB 95, § 5; Laws 1988, LB 1030, § 52; R.S.1943, (1999), § 83-1011; Laws 2004, LB 1083, § 30.

## 71-911 Regional center, defined.

Regional center means a state hospital for the mentally ill as designated in section 83-305.

**Source:** Laws 1976, LB 806, § 7; R.S.1943, (1999), § 83-1007; Laws 2004, LB 1083, § 31.

## 71-912 Subject, defined.

Subject means any person concerning whom a certificate or petition has been filed under the Nebraska Mental Health Commitment Act. Subject does not include any person under eighteen years of age unless such person is an emancipated minor.

**Source:** Laws 1976, LB 806, § 14; Laws 1996, LB 1155, § 94; R.S.1943, (1999), § 83-1014; Laws 2004, LB 1083, § 32.

## 71-913 Substance dependent, defined.

Substance dependent means having a behavioral disorder that involves a maladaptive pattern of repeated use of controlled substances, illegal drugs, or alcohol, usually resulting in increased tolerance, withdrawal, and compulsive using behavior and including a cluster of cognitive, behavioral, and physiologi-



cal symptoms involving the continued use of such substances despite significant adverse effects resulting from such use.

**Source:** Laws 1985, LB 252, § 3; R.S.1943, (1999), § 83-1009.02; Laws 2004, LB 1083, § 33.

**71-914 Treatment facility, defined.**

Treatment facility means a facility which is licensed to provide services for persons who are mentally ill or substance dependent or both.

**Source:** Laws 1976, LB 806, § 6; Laws 1985, LB 252, § 1; Laws 1995, LB 275, § 24; R.S.1943, (1999), § 83-1006; Laws 2004, LB 1083, § 34.

**71-915 Mental health boards; created; powers; duties; compensation.**

(1) The presiding judge in each district court judicial district shall create at least one but not more than three mental health boards in such district and shall appoint sufficient members and alternate members to such boards. Members and alternate members of a mental health board shall be appointed for four-year terms. The presiding judge may remove members and alternate members of the board at his or her discretion. Vacancies shall be filled for the unexpired term in the same manner as provided for the original appointment. Members of the mental health board shall have the same immunity as judges of the district court.

(2) Each mental health board shall consist of an attorney licensed to practice law in this state and any two of the following but not more than one from each category: A physician, a psychologist, a psychiatric nurse, a licensed clinical social worker or a licensed independent clinical social worker, a licensed independent mental health practitioner who is not a social worker, or a layperson with a demonstrated interest in mental health and substance dependency issues. The attorney shall be chairperson of the board. Members and alternate members of a mental health board shall take and subscribe an oath to support the United States Constitution and the Constitution of Nebraska and to faithfully discharge the duties of the office according to law.

(3) The mental health board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties. No mental health board hearing shall be conducted unless three members or alternate members are present and able to vote. Any action taken at any mental health board hearing shall be by majority vote.

(4) The mental health board shall prepare and file an annual inventory statement with the county board of its county of all county personal property in its custody or possession. Members of the mental health board shall be compensated and shall be reimbursed for their actual and necessary expenses by the county or counties being served by such board. Compensation shall be at an hourly rate to be determined by the presiding judge of the district court, except that such compensation shall not be less than fifty dollars for each hearing of the board. Members shall also be reimbursed for their actual and necessary expenses, not including charges for meals. Mileage shall be determined pursuant to section 23-1112.

**Source:** Laws 1976, LB 806, § 27; Laws 1981, LB 95, § 7; Laws 1990, LB 822, § 39; Laws 1994, LB 498, § 6; R.S.1943, (1999), § 83-1017; Laws 2004, LB 1083, § 35; Laws 2011, LB111, § 1.

§ 71-915

PUBLIC HEALTH AND WELFARE

A mental health board may assign an alternate member to serve so that the board has the required three members. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

social worker is a "layman" within the meaning of this section. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

A person who is not a lawyer, a physician, a psychologist, a psychiatric social worker, a psychiatric nurse, or a clinical

**71-916 Mental health board; training; department; duties.**

(1) The Department of Health and Human Services shall provide appropriate training to members and alternate members of each mental health board and shall consult with consumer and family advocacy groups in the development and presentation of such training. Members and alternate members shall be reimbursed for any actual and necessary expenses incurred in attending such training in a manner and amount determined by the presiding judge of the district court. No person shall remain on a mental health board or be eligible for appointment or reappointment as a member or alternate member of such board unless he or she has attended and satisfactorily completed such training pursuant to rules and regulations adopted and promulgated by the department.

(2) The department shall provide the mental health boards with blanks for warrants, certificates, and other forms and printed copies of applicable rules and regulations of the department that will enable the boards to carry out their powers and duties under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

**Source:** Laws 2004, LB 1083, § 36; Laws 2006, LB 1199, § 35; Laws 2007, LB296, § 461.

Cross References

Sex Offender Commitment Act, see section 71-1201.

**71-917 Clerk of the district court; duties relating to mental health board.**

The clerk of the district court appointed for that purpose by a district judge of that district court judicial district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board and shall affix his or her seal as clerk of the district court. The clerk shall file and preserve in his or her office all papers connected with any proceedings of the mental health board and all related notices, reports, and other communications. The clerk shall keep minutes of all proceedings of the board. All required notices, reports, and communications may be sent by mail unless otherwise provided in the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The fact and date that such notices, reports, and communications have been sent and received shall be noted on the proper record.

**Source:** Laws 1976, LB 806, § 16; Laws 1981, LB 95, § 6; Laws 2000, LB 884, § 5; R.S.Supp.,2002, § 83-1016; Laws 2004, LB 1083, § 37; Laws 2006, LB 1199, § 36.

Cross References

Sex Offender Commitment Act, see section 71-1201.

**71-918 Facility or programs for treatment of mental illness, substance dependence, or personality disorders; voluntary admission; unconditional discharge; exception.**

Any person may voluntarily apply for admission to any public or private hospital, other treatment facility, or program for treatment of mental illness,

substance dependence, or personality disorders in accordance with the regulations of such facilities or programs governing such admissions. Any person who is voluntarily admitted for such treatment shall be unconditionally discharged from such hospital, treatment facility, or program not later than forty-eight hours after delivery of his or her written request to any official of such hospital, treatment facility, or program, unless action is taken under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to continue his or her custody.

**Source:** Laws 1976, LB 806, § 29; Laws 1978, LB 501, § 1; Laws 1985, LB 252, § 4; Laws 2000, LB 884, § 6; R.S.Supp.,2002, § 83-1019; Laws 2004, LB 1083, § 38; Laws 2006, LB 1199, § 37.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-919 Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional.**

(1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

(3) Upon admission to a facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Department of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender

and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

**Source:** Laws 1976, LB 806, § 30; Laws 1978, LB 501, § 2; Laws 1988, LB 257, § 2; Laws 1996, LB 1044, § 964; Laws 1996, LB 1155, § 95; R.S.1943, (1999), § 83-1020; Laws 2004, LB 1083, § 39; Laws 2006, LB 1199, § 38; Laws 2007, LB296, § 462.

Cross References

**Sex Offender Commitment Act**, see section 71-1201.

**71-920 Mentally ill and dangerous person; certificate of mental health professional; contents.**

(1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is mentally ill and dangerous shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

- (a) The subject's name and address, if known;
- (b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;
- (c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;
- (d) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence who may be called as a witness at a mental health board hearing with respect to the subject, if known;
- (e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;
- (f) The name and work address of the certifying mental health professional;
- (g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is mentally ill and dangerous and the clinical basis for such opinion.

**Source:** Laws 2004, LB 1083, § 40.

**71-921 Person believes another to be a mentally ill and dangerous person; notify county attorney; petition; when.**

(1) Any person who believes that another person is mentally ill and dangerous may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in section 71-908, he or she shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county, and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

- (a) The subject's name and address, if known;
- (b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;
- (c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;
- (d) A statement that the county attorney has probable cause to believe that the subject of the petition is mentally ill and dangerous;
- (e) A statement that the beliefs of the county attorney are based on specific behavior, acts, attempts, or threats which shall be specified and described in detail in the petition; and
- (f) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

**Source:** Laws 1976, LB 806, § 34; Laws 1981, LB 95, § 9; Laws 2000, LB 884, § 8; R.S.Supp.,2002, § 83-1024; Laws 2004, LB 1083, § 41.

Under the Nebraska Mental Health Commitment Act, venue is proper in one county even though the alleged behavior of the subject which constituted the basis for the petition occurred in another county, because both counties are within the same judicial district. In re Interest of Michael U., 14 Neb. App. 918, 720 N.W.2d 403 (2006).

**71-922 Mental health board proceedings; commencement; custody; conditions; dismissal; when.**

(1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 71-921 or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-920 or the administrator of the treatment center or medical facility having charge of the subject of his or her intention to file such petition. The county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 71-921 may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is mentally ill and dangerous as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of . . . . ., Alleged to be Mentally Ill and Dangerous. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 71-924, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

**Source:** Laws 1976, LB 806, § 36; Laws 1981, LB 95, § 10; Laws 2000, LB 884, § 9; R.S.Supp.,2002, § 83-1026; Laws 2004, LB 1083, § 42; Laws 2005, LB 551, § 9.

**71-923 Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.**

Upon the filing of the petition under section 71-921, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections 71-943 to 71-960, and a list of the names, addresses, and telephone numbers of mental health professionals in that immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. The failure of a subject to appear as required under this section shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody.

**Source:** Laws 1976, LB 806, § 37; Laws 1981, LB 95, § 11; Laws 1996, LB 1155, § 98; R.S.1943, (1999), § 83-1027; Laws 2004, LB 1083, § 43.

**71-924 Hearing; mental health board; duties.**

A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is mentally ill and dangerous as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall proceed to enter a treatment order pursuant to section 71-925. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

**Source:** Laws 1976, LB 806, § 45; Laws 1981, LB 95, § 14; R.S.1943, (1999), § 83-1035; Laws 2004, LB 1083, § 44.

**71-925 Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.**

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is mentally ill and dangerous and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908.

(2) If the mental health board finds that the subject is not mentally ill and dangerous, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is mentally ill and dangerous but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in section 71-908, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in section 71-908, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

**Source:** Laws 1976, LB 806, § 47; Laws 1978, LB 501, § 7; Laws 1981, LB 95, § 16; Laws 1996, LB 1155, § 102; R.S.1943, (1999), § 83-1037; Laws 2004, LB 1083, § 45.

The board of mental health's conclusion that a person before it is a mentally ill dangerous person and that a less restrictive alternative is not available or would not suffice to prevent the harm described in section 83-1009 must be supported by clear and convincing evidence. In re Interest of Vance, 242 Neb. 109, 493 N.W.2d 620 (1992).

In determining whether a person is dangerous, the focus must be on the subject's condition at the time of the hearing, not the date the subject of the commitment hearing was initially taken into custody. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

Statute requires proof that person is dangerous before he will be subject to involuntary confinement. Richards v. Douglas County, 213 Neb. 313, 328 N.W.2d 783 (1983).

Pursuant to subsection (6) of this section, a mental health board, after considering all treatment alternatives including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person, can commit a person for inpatient treatment; such a treatment order shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. In re Interest of Dennis W., 14 Neb. App. 827, 717 N.W.2d 488 (2006).

### **71-926 Subject; custody pending entry of treatment order.**

(1) At the conclusion of a mental health board hearing under section 71-924 and prior to the entry of a treatment order by the board under section 71-925, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in section 71-908 and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.



(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order.

**Source:** Laws 1976, LB 806, § 49; Laws 1988, LB 257, § 4; Laws 1996, LB 1044, § 967; Laws 1996, LB 1155, § 103; R.S.1943, (1999), § 83-1039; Laws 2004, LB 1083, § 46.

**71-927 Mentally ill and dangerous subject; board; issue warrant; contents; immunity.**

If the mental health board finds the subject to be mentally ill and dangerous and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Nebraska Mental Health Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility.

**Source:** Laws 1976, LB 806, § 51; Laws 1985, LB 252, § 5; Laws 1994, LB 337, § 1; R.S.1943, (1999), § 83-1041; Laws 2004, LB 1083, § 47.

**71-928 Inpatient treatment; subject taken to facility; procedure.**

When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 71-927, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person.

**Source:** Laws 1976, LB 806, § 52; R.S.1943, (1999), § 83-1042; Laws 2004, LB 1083, § 48.

**71-929 Mental health board; execution of warrants; costs; procedure.**

(1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Nebraska Mental Health Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

**Source:** Laws 2004, LB 1083, § 49.

**71-930 Treatment order of mental health board; appeal; final order of district court; appeal.**

The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 71-925 to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

**Source:** Laws 1976, LB 806, § 53; Laws 1991, LB 732, § 155; R.S.1943, (1999), § 83-1043; Laws 2004, LB 1083, § 50.

In reviewing a district court's judgment under this act, the Supreme Court will affirm the district court's judgment unless, as a matter of law, the judgment is unsupported by evidence which is clear and convincing. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

This section requires the district court to review appeals from the mental health board de novo on the record, and this court to hear appeals from the district court in accordance with criminal procedures. In re Interest of Aandahl, 219 Neb. 414, 363 N.W.2d 392 (1985).

A finding that the accused is incompetent to stand trial may be appealed to the Supreme Court as a final order. State v. Guatney, 207 Neb. 501, 299 N.W.2d 538 (1980).

The Supreme Court will not interfere on appeal with a final order made by the district court in mental health commitment proceedings unless it can say as a matter of law that the order is not supported by clear and convincing evidence. Hill v. County

Board of Mental Health, Douglas County, 203 Neb. 610, 279 N.W.2d 838 (1979).

Commitment proceedings are judicial in nature and the District Courts must review the decisions of Mental Health Boards de novo on the record. Lux v. Mental Health Board of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

An order adjudicating an individual as a mentally ill dangerous person pursuant to section 71-908 and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

The subject of a mental health petition (or the county attorney) has the statutory right to appeal the mental health board's decision to the district court, which reviews the case de novo on the record. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

**71-931 Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.**

(1) Any treatment order entered by a mental health board under section 71-925 shall include directions for (a) the preparation and implementation of

an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or substance dependence, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

**Source:** Laws 1976, LB 806, § 54; Laws 1978, LB 501, § 9; Laws 1981, LB 95, § 17; Laws 1996, LB 1155, § 105; R.S.1943, (1999), § 83-1044; Laws 2004, LB 1083, § 51.

**71-932 Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.**

The person or entity designated by the mental health board under section 71-931 to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

**Source:** Laws 1976, LB 806, § 55; Laws 1978, LB 501, § 10; Laws 1996, LB 1155, § 106; R.S.1943, (1999), § 83-1045; Laws 2004, LB 1083, § 52.

**71-933 Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.**

(1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental

health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or substance dependence. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2)(a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

**Source:** Laws 1994, LB 498, § 9; R.S.1943, (1999), § 83-1045.01; Laws 2004, LB 1083, § 53.

**71-934 Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.**

The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

**Source:** Laws 1994, LB 498, § 10; Laws 1996, LB 1155, § 107; R.S.1943, (1999), § 83-1045.02; Laws 2004, LB 1083, § 54.

Under former law, language in this section providing that no person may be held in custody pending a hearing for a period exceeding 7 days is directory, not mandatory, because of the purposes of this section and the lack of a remedy for violation of this section. In re Interest of E.M., 13 Neb. App. 287, 691 N.W.2d 550 (2005).

**71-935 Mental health board; review hearing; order discharge or change treatment disposition; when.**

(1) Upon the filing of a periodic report under section 71-932, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 71-937 or 71-938, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71-931 to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-932 to the satisfaction of the board that (a) cause no longer exists for the care or treatment of the subject or (b) a less restrictive treatment alternative exists for the subject. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act shall attach to the subject.

**Source:** Laws 1976, LB 806, § 56; Laws 1994, LB 498, § 11; Laws 1996, LB 1155, § 108; R.S.1943, (1999), § 83-1046; Laws 2004, LB 1083, § 55.

The Nebraska Mental Health Commitment Act clearly and plainly contemplates that due process be afforded at hearings other than the one held upon the filing of the initial petition. In re Interest of Powers, 242 Neb. 19, 493 N.W.2d 166 (1992).

Upon review of a commitment under this section, the State must prove by clear and convincing evidence that the individual remains mentally ill and dangerous. In re Interest of Dickson, 238 Neb. 148, 469 N.W.2d 357 (1991).

**71-936 Regional center or treatment facility; administrator; discharge of involuntary patient; notice.**

When the administrator of any regional center or treatment facility for the treatment of persons who are mentally ill or substance dependent determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

**Source:** Laws 1967, c. 251, § 16, p. 670; Laws 1981, LB 95, § 4; R.S.1943, (1999), § 83-340.01; Laws 2004, LB 1083, § 56.

**71-937 Mental health board; notice of release; hearing.**

A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is mentally

ill and dangerous and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Nebraska Mental Health Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

**Source:** Laws 1981, LB 95, § 26; Laws 2003, LB 724, § 10; R.S. Supp., 2003, § 83-1079; Laws 2004, LB 1083, § 57.

**71-938 Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.**

The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Nebraska Mental Health Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is mentally ill and dangerous, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 71-925.

**Source:** Laws 1981, LB 95, § 27; R.S. 1943, (1999), § 83-1080; Laws 2004, LB 1083, § 58.

**71-939 Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.**

When any person receiving treatment at a treatment facility or program for persons with mental illness or substance dependence pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall issue the warrant of the board directed to the sheriff of the county for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in this section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

**Source:** Laws 1969, c. 215, § 10, p. 835; Laws 1976, LB 806, § 19; R.S. 1943, (1994), § 83-308.02; Laws 1996, LB 1155, § 112; R.S. 1943, (1999), § 83-1071; Laws 2004, LB 1083, § 59.

**71-940 Person with mental illness or substance dependence; committed under other state's laws; return to other state; procedure; warrant issued.**

The Governor may, upon demand from officials of another state, deliver to the executive authority of another state or his or her designee any person who is absent without authorization from a treatment facility or program for persons with mental illness or substance dependence to which such person has been committed under the laws of the other state either through civil commitment, as a result of being found not responsible for a criminal act by reason of insanity or mental illness, or as a result of being found not competent to stand trial for a criminal charge. The demand shall be accompanied by a certified copy of the commitment and sworn statement by the administrator of the treatment facility or program stating that (1) the person is absent without authorization, (2) the person is currently dangerous to himself, herself, or others, and (3) the demanding state is willing to accept the person back for further treatment. If the Governor is satisfied that the demand conforms to law, the Governor shall issue a warrant under seal of this state authorizing the return of such person to the demanding state at the expense of the demanding state.

**Source:** Laws 1996, LB 1155, § 113; R.S.1943, (1999), § 83-1072; Laws 2004, LB 1083, § 60.

**71-941 Person with mental illness or substance dependence; arrested under warrant; notice; rights; writ of habeas corpus; hearing.**

(1) A person arrested upon a warrant pursuant to section 71-940 shall not be delivered to a demanding state until he or she is notified of the demand for his or her surrender and has had an opportunity to apply for a writ of habeas corpus. If an application is filed, notice of the time and place for hearing on the writ shall be given to the county attorney of the county where the arrest was made. The person arrested shall have the right to counsel and the right to have counsel appointed for him or her if the person is indigent. Pending the determination of the court upon the application for the writ, the person detained shall be maintained in a suitable facility as described in section 71-919 or a hospital for persons with mental illness.

(2) At a hearing on a writ of habeas corpus, the State of Nebraska shall show that there is probable cause to believe that (a) such person is absent without authorization from a treatment facility or program for persons with mental illness or substance dependence to which he or she was committed located in the demanding state, (b) the demanding state has reason to believe that such person is currently dangerous to himself, herself, or others, and (c) the demanding state is willing to accept the person back for further treatment.

**Source:** Laws 1996, LB 1155, § 114; R.S.1943, (1999), § 83-1073; Laws 2004, LB 1083, § 61.

**71-942 Person with mental illness, substance dependence, or personality disorder; dangerous sex offender; located outside state; demand return; procedure.**

The Governor may appoint an agent to demand of the executive authority of another state any person who is located in such other state, who was receiving treatment at a treatment facility or program in this state pursuant to the Nebraska Mental Health Commitment Act, the Sex Offender Commitment Act,

or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who is absent without authorization from such treatment facility or program. The demand shall be accompanied by a certified copy of the order of commitment and a sworn statement by the administrator of the treatment facility or program stating that (1) the person is absent without authorization, (2) the administrator or program director of such treatment facility or program believes that such person is currently dangerous to himself, herself, or others, and (3) the treatment facility or program is willing to accept the person back for further treatment. This section does not prevent extradition under the Uniform Criminal Extradition Act if such act applies.

**Source:** Laws 1996, LB 1155, § 115; R.S.1943, (1999), § 83-1074; Laws 2004, LB 1083, § 62; Laws 2006, LB 1199, § 39.

Cross References

**Sex Offender Commitment Act**, see section 71-1201.

**Uniform Criminal Extradition Act**, see section 29-758.

**71-943 Subjects' rights during proceedings against them.**

In addition to the rights granted subjects by any other provisions of the Nebraska Mental Health Commitment Act, such subjects shall be entitled to the rights provided in sections 71-943 to 71-960 during proceedings concerning the subjects under the act.

**Source:** Laws 1976, LB 806, § 57; Laws 2000, LB 884, § 10; R.S.Supp.,2002, § 83-1047; Laws 2004, LB 1083, § 63.

**71-944 Subject's rights; written notice of the time and place of hearing; reasons alleged for treatment; procedure.**

A subject shall, in advance of the mental health board hearing conducted under section 71-924 or 71-1208, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that he or she is mentally ill and dangerous or a dangerous sex offender requiring inpatient or outpatient treatment ordered by the mental health board, and all rights to which such subject is entitled under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights required by sections 71-923 and 71-924 or sections 71-1207 and 71-1208. If the subject has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder or personality disorder, if true, is such that it is not prudent to disclose the label of the mental disorder or personality disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness or personality disorder, including its label. The clerk shall issue the summons by order of the mental health board.

**Source:** Laws 1976, LB 806, § 58; Laws 1981, LB 95, § 18; Laws 2000, LB 884, § 11; R.S.Supp.,2002, § 83-1048; Laws 2004, LB 1083, § 64; Laws 2006, LB 1199, § 40.

Cross References

**Sex Offender Commitment Act**, see section 71-1201.



**71-945 Subject's rights; representation by counsel; appointment of counsel if indigent.**

A subject shall have the right to be represented by counsel in all proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody under section 71-919, or after the filing of a petition under section 71-921 or 71-1205, whichever occurs first, and before the mental health board hearing conducted under section 71-924 or 71-1208, the board shall determine whether the subject is indigent. If the subject is found to be indigent, the board shall certify that fact to the district or county court by causing to be delivered to the clerk of such court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency protective custody or such petition is filed.

**Source:** Laws 1976, LB 806, § 59; Laws 1981, LB 95, § 19; Laws 2000, LB 884, § 12; R.S.Supp.,2002, § 83-1049; Laws 2004, LB 1083, § 65; Laws 2006, LB 1199, § 41.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-946 Appointment of counsel; procedure.**

The appointment of counsel under section 71-945 shall be in accordance with the following procedures:

(1) Except in counties having a public defender, upon the receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the district judge or the county judge of the county in which the proceedings are pending of the receipt of such certificate. The judge to whom the certificate was issued shall appoint an attorney to represent the person concerning whom an application is filed before the mental health board, whereupon the clerk of the court shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board. The clerk of the district court or the clerk of the county court shall also keep and maintain a record of all appointments which shall be conclusive evidence thereof. All appointments of counsel under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be made at any time or place in the state; and

(2) In counties having a public defender, upon receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the public defender of his or her appointment to represent the person and shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board.

**Source:** Laws 1976, LB 806, § 60; Laws 2000, LB 884, § 13; R.S.Supp.,2002, § 83-1050; Laws 2004, LB 1083, § 66; Laws 2006, LB 1199, § 42.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-947 Appointed counsel; fees; reimbursement of costs incurred; procedure.**

Counsel appointed as provided in subdivision (1) of section 71-946 shall apply to the court in which his or her appointment is recorded for fees for services performed. Such counsel may also apply to the court to secure separate professional examination of the person for whom counsel was appointed and shall be reimbursed for costs incurred in securing such separate examination or examinations or in having other professional persons as witnesses before the mental health board. The court, upon hearing the application, shall fix reasonable fees, including reimbursement of costs incurred. The county board of the county in which the application was filed shall allow the account, bill, or claim presented by the attorney for services performed under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof has been determined by the court.

**Source:** Laws 1976, LB 806, § 61; Laws 2000, LB 884, § 14; R.S.Supp.,2002, § 83-1051; Laws 2004, LB 1083, § 67; Laws 2006, LB 1199, § 43.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-948 Subject's rights; independent evaluation and assistance in proceedings; fees and expenses.**

A subject or the subject's counsel shall have the right to employ mental health professionals of his or her choice to independently evaluate the subject's mental condition and testify for and otherwise assist the subject in proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. If the subject is indigent, only one such person may be employed except with leave of the mental health board. Any person so employed by a subject determined by the board to be indigent, except a subject represented by the public defender, shall apply to the board for expenses reasonably necessary to such person's effective assistance of the subject and for reasonable fees for services performed by such person in assisting the subject. The board shall then fix reasonable fees and expenses, and the county board shall allow payment to such person in the full amount fixed by the board.

**Source:** Laws 1976, LB 806, § 62; Laws 1994, LB 1210, § 161; R.S.1943, (1999), § 83-1052; Laws 2004, LB 1083, § 68; Laws 2006, LB 1199, § 44.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-949 Counsel for subject; rights; enumerated; discovery; appeal from denial of discovery; when.**

Counsel for a subject, upon request made to the county attorney at any time after the subject has been taken into emergency protective custody under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, or after the filing of a petition under section 71-921 or 71-1205, whichever occurs first, shall have the right to be provided with (1) the names of all witnesses expected to testify in support of the petition, (2) knowledge of the location and access at reasonable times for review or copying of all written

documents including reports of peace officers, law enforcement agencies, and mental health professionals, (3) access to all other tangible objects in the possession of the county attorney or to which the county attorney has access, and (4) written records of any treatment facility or mental health professional which or who has at any time treated the subject for mental illness, substance dependence, or a personality disorder, which records are relevant to the issues of whether the subject is mentally ill and dangerous or a dangerous sex offender and, if so, what treatment disposition should be ordered by the mental health board. The board may order further discovery at its discretion. The county attorney shall have a reciprocal right to discover items and information comparable to those first discovered by the subject. The county court and district court shall have the power to rule on objections to discovery in matters which are not self-activating. The right of appeal from denial of discovery shall be at the time of the conclusion of the mental health board hearing.

**Source:** Laws 1976, LB 806, § 63; Laws 1981, LB 95, § 20; R.S.1943, (1999), § 83-1053; Laws 2004, LB 1083, § 69; Laws 2006, LB 1199, § 45.

#### Cross References

**Sex Offender Commitment Act**, see section 71-1201.

#### **71-950 Continuances; liberally granted.**

Continuances shall be liberally granted at the request of the subject. Continuances may be granted to permit the subject to obtain voluntary treatment at a private facility.

**Source:** Laws 1976, LB 806, § 64; Laws 1985, LB 252, § 6; R.S.1943, (1999), § 83-1054; Laws 2004, LB 1083, § 70.

#### **71-951 Mental health board hearings; closed to public; exception; where conducted.**

All mental health board hearings under the Nebraska Mental Health Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

**Source:** Laws 1976, LB 806, § 65; Laws 2000, LB 884, § 15; R.S.Supp.,2002, § 83-1055; Laws 2004, LB 1083, § 71.

Mental health board hearings are closed to the public except at the request of the subject. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

#### **71-952 Subject's rights; appear in person and testify in own behalf; present witnesses and evidence.**

A subject shall appear personally and be afforded the opportunity to testify in his or her own behalf and to present witnesses and tangible evidence in defending against the petition at the hearing.

**Source:** Laws 1976, LB 806, § 66; Laws 1981, LB 95, § 21; R.S.1943, (1999), § 83-1056; Laws 2004, LB 1083, § 72.

#### **71-953 Subject's rights; compulsory process to obtain testimony of witnesses.**

A subject shall be entitled to compulsory process to obtain the testimony of witnesses in his or her favor.

**Source:** Laws 1976, LB 806, § 67; R.S.1943, (1999), § 83-1057; Laws 2004, LB 1083, § 73.

**71-954 Subject's rights; confront and cross-examine adverse witnesses and evidence.**

A subject shall have the right at a hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the United States Constitution and Article I, section 11, of the Constitution of Nebraska.

**Source:** Laws 1976, LB 806, § 68; Laws 1981, LB 95, § 22; Laws 2000, LB 884, § 16; R.S.Supp.,2002, § 83-1058; Laws 2004, LB 1083, § 74; Laws 2006, LB 1199, § 46.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

Pursuant to this section, the subject of a petition under the Nebraska Mental Health Commitment Act has the right to confront and cross-examine adverse witnesses and evidence equivalent to the rights granted under the Confrontation Clauses of the U.S. and Nebraska Constitutions. In the absence of a waiver by the subject of a petition for commitment of his or her right to confrontation, in order to admit the telephonic testimony of a mental health professional during a civil commitment

hearing, the State must demonstrate that (1) such testimony is necessary to further an important public policy and (2) the mental health professional is truly unavailable as a witness, thus necessitating telephonic testimony. The requirements of a demonstration of an important public policy and necessity are conjunctive, and the absence of a demonstration of either precludes the admission of the telephonic testimony. In re Interest of S.B., 263 Neb. 175, 639 N.W.2d 78 (2002).

**71-955 Hearings; rules of evidence applicable.**

The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Nebraska Mental Health Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

**Source:** Laws 1976, LB 806, § 69; Laws 1981, LB 95, § 23; Laws 2000, LB 884, § 17; R.S.Supp.,2002, § 83-1059; Laws 2004, LB 1083, § 75.

The transcript of the proceeding before a mental health board may not be treated as evidence before the board, the district court, or this court unless the facts in the transcript are offered as evidence, are not objected to, and are received by the trier of fact. In re Interest of Kinnebrew, 224 Neb. 885, 402 N.W.2d 264 (1987).

This statute makes the general rules of evidence applicable to proceedings under the Mental Health Commitment Act. In re Interest of Blythman, 208 Neb. 51, 302 N.W.2d 666 (1981).

This section does not mandate Miranda-type warnings precede a psychiatric interview by a doctor. Kraemer v. Mental Health Board of the State of Nebraska, 199 Neb. 784, 261 N.W.2d 626 (1978).

**71-956 Subject's rights; written statements; contents.**

A subject shall be entitled to written statements by the mental health board as to the evidence relied on and reasons (1) for finding clear and convincing evidence at the subject's hearing that he or she is mentally ill and dangerous or a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908 or subdivision (1) of section 83-174.01 and (2) for choosing the particular treatment specified by its order of final disposition. The mental health board shall make similar written findings when it orders a subject held in custody rather than released on

conditions pending hearings to determine whether he or she is mentally ill and dangerous or a dangerous sex offender and in need of treatment ordered by the mental health board or pending the entry of an order of final disposition under section 71-925 or 71-1209.

**Source:** Laws 1976, LB 806, § 70; Laws 1981, LB 95, § 24; R.S.1943, (1999), § 83-1060; Laws 2004, LB 1083, § 76; Laws 2006, LB 1199, § 47.

**71-957 Proceedings shall be of record; reporter; expenses and fees.**

All proceedings held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act shall be of record, and all oral proceedings shall be reported verbatim by either a qualified shorthand reporter or by tape-recording equipment equivalent in quality to that required in county courts by section 25-2732. The written findings of the mental health board shall be part of the subject's records and shall be available to the parties in the case and to the treatment facility where the subject is receiving treatment pursuant to a commitment order of the mental health board under section 71-925 or 71-1209. Any qualified shorthand reporter who reports proceedings presided over by a board or otherwise than in his or her capacity as an official district court stenographic reporter shall apply to the court for reasonable expenses and fees for services performed in such hearings. The court shall fix reasonable expenses and fees, and the county board shall allow payment to the reporter in the full amount fixed by the court.

**Source:** Laws 1976, LB 806, § 71; Laws 2000, LB 884, § 18; R.S.Supp.,2002, § 83-1061; Laws 2004, LB 1083, § 77; Laws 2006, LB 1199, § 48.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-958 Qualified mental health professional; provide medical treatment to subject; when.**

Any qualified mental health professional, upon being authorized by the administrator of the treatment facility having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except that a subject shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act as will substantially impair his or her ability to assist in his or her defense at such hearing.

**Source:** Laws 1976, LB 806, § 72; Laws 2000, LB 884, § 19; R.S.Supp.,2002, § 83-1062; Laws 2004, LB 1083, § 78; Laws 2006, LB 1199, § 49.

**Cross References**

**Mistreatment of mentally ill person**, penalty, see section 83-356.

**Sex Offender Commitment Act**, see section 71-1201.

**71-959 Subject in custody or receiving treatment; rights; enumerated.**

A subject in custody or receiving treatment under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act has the right:

(1) To be considered legally competent for all purposes unless he or she has been declared legally incompetent. The mental health board shall not have the power to declare an individual incompetent;

(2) To receive prompt and adequate evaluation and treatment for mental illness, personality disorders, and physical ailments and to participate in his or her treatment planning activities to the extent determined to be appropriate by the mental health professional in charge of the subject's treatment;

(3) To refuse treatment medication, except (a) in an emergency, such treatment medication as is essential in the judgment of the mental health professional in charge of such treatment to prevent the subject from causing injury to himself, herself, or others or (b) following a hearing and order of a mental health board, such treatment medication as will substantially improve his or her mental illness or personality disorder or reduce the risk posed to the public by a dangerous sex offender;

(4) To communicate freely with any other person by sealed mail, personal visitation, and private telephone conversations;

(5) To have reasonably private living conditions, including private storage space for personal belongings;

(6) To engage or refuse to engage in religious worship and political activity;

(7) To be compensated for his or her labor in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 206, as such section existed on January 1, 2004;

(8) To have access to a patient grievance procedure; and

(9) To file, either personally or by counsel, petitions or applications for writs of habeas corpus for the purpose of challenging the legality of his or her custody or treatment.

**Source:** Laws 1976, LB 806, § 76; Laws 2000, LB 884, § 21; R.S.Supp.,2002, § 83-1066; Laws 2004, LB 1083, § 79; Laws 2006, LB 1199, § 50.

#### Cross References

**Sex Offender Commitment Act**, see section 71-1201.

The determination of what constitutes "prompt and adequate" treatment, as those terms are used in subsection (2) of this section, will inherently be a factual determination to be made

based on the evidence and circumstances presented in each particular case. *Navarette v. Settle*, 10 Neb. App. 479, 633 N.W.2d 588 (2001).

#### **71-960 Subject; waive rights; manner.**

A subject may waive any of the proceedings or rights incident to proceedings granted him or her under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject and such subject's legal guardian or conservator, if any. Such rights may otherwise be denied only by a mental health board or court order for good cause shown after notice to the subject, the subject's counsel, and such subject's guardian or conservator, if any, and an opportunity to be heard. If the mental health board determines that the subject is not able to waive his or her rights under this section, it shall be up to the

discretion of the subject's counsel to exercise such rights. When the subject is not represented by counsel, the rights may not be waived.

**Source:** Laws 1976, LB 806, § 74; Laws 1996, LB 1155, § 109; Laws 2000, LB 884, § 20; R.S.Supp.,2002, § 83-1064; Laws 2004, LB 1083, § 80; Laws 2006, LB 1199, § 51.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

**71-961 Subject's records; confidential; exceptions.**

(1) All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, (h) individuals authorized to receive notice of the release of a sex offender pursuant to section 83-174, (i) the Nebraska State Patrol or the department pursuant to section 69-2409.01, or (j) the Division of Parole Supervision if the subject meets the requirements for lifetime community supervision pursuant to section 83-174.03.

(2) Upon application by the county attorney or by the administrator of the treatment facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the treatment facility is located may order that the records not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental illness or personality disorder and the treatment thereof.

(3) When a subject is absent without authorization from a treatment facility or program described in section 71-939 or 71-1223 and is considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn the public of such danger.

**Source:** Laws 1976, LB 806, § 78; Laws 1996, LB 1055, § 17; Laws 1996, LB 1155, § 111; Laws 1997, LB 307, § 230; R.S.1943, (1999), § 83-1068; Laws 2004, LB 1083, § 81; Laws 2006, LB 1199, § 52; Laws 2007, LB296, § 463; Laws 2018, LB841, § 13.  
Effective date July 19, 2018.

**71-962 Violations; penalty.**

Any person who willfully (1) files or causes to be filed a certificate or petition under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, knowing any of the allegations thereof to be false, (2) deprives a subject of any of the rights granted the subject by either act or section 83-390, or (3) breaches the confidentiality of records required by

section 71-961 shall be guilty of a Class II misdemeanor in addition to any civil liability which he or she may incur for such actions.

**Source:** Laws 1976, LB 806, § 79; Laws 1977, LB 41, § 63; Laws 2000, LB 884, § 22; R.S.Supp.,2002, § 83-1069; Laws 2004, LB 1083, § 82; Laws 2006, LB 1199, § 53.

**Cross References**

**Sex Offender Commitment Act**, see section 71-1201.

The Nebraska Mental Health Commitment Act provides for a criminal penalty for any person who willfully breaches the confidentiality of records as required by section 83-1068, in addition to any civil liability which may be incurred by such acts. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

**71-963 Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.**

(1) Upon release from commitment or treatment, a person who, because of a mental health-related commitment or adjudication occurring under the laws of this state, is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4) or is disqualified from obtaining a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404 or obtaining a permit to carry a concealed handgun under the Concealed Handgun Permit Act may petition the mental health board to remove such firearm-related disabilities.

(2)(a)(i) Upon the filing of the petition, the petitioner may request and, if the request is made, shall be entitled to, a review hearing by the mental health board. The petitioner shall prove by clear and convincing evidence that:

(A) The petitioner will not be likely to act in a manner dangerous to public safety; and

(B) The granting of the relief would not be contrary to the public interest.

(ii) In determining whether to remove the petitioner's firearm-related disabilities, the mental health board shall receive and consider evidence upon the following:

(A) The circumstances surrounding the petitioner's mental health commitment or adjudication;

(B) The petitioner's record, which shall include, at a minimum, the petitioner's mental health and criminal history records;

(C) The petitioner's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence; and

(D) Changes in the petitioner's condition, treatment, treatment history, or circumstances relevant to the relief sought.

(b) The mental health board shall grant a petition filed under this section if the mental health board determines that the petitioner has proven by clear and convincing evidence that the firearm-related disabilities set forth in subsection (1) of this section should be removed.

(3) If a decision is made by the mental health board to remove the petitioner's firearm-related disabilities, the clerks of the various courts shall, as soon as practicable, but within thirty days, send an order to the Nebraska State Patrol and the Department of Health and Human Services, in a form and in a manner prescribed by the Department of Health and Human Services and the Nebraska State Patrol, stating the mental health board's findings, which shall include a statement that, in the opinion of the mental health board, (a) the petitioner is not likely to act in a manner that is dangerous to public safety and (b) removing



the petitioner's firearm-related disabilities will not be contrary to the public interest.

(4) The petitioner may appeal a denial of the requested relief to the district court, and review on appeal shall be de novo.

(5) If a petition is granted under this section, the commitment or adjudication for which relief is granted shall be deemed not to have occurred for purposes of section 69-2404 and the Concealed Handgun Permit Act and, pursuant to section 105(b) of Public Law 110-180, for purposes of 18 U.S.C. 922(d)(4) and (g)(4).

**Source:** Laws 2011, LB512, § 8; Laws 2018, LB100, § 1.  
Effective date July 19, 2018.

**Cross References**

**Concealed Handgun Permit Act**, see section 69-2427.

**ARTICLE 10**

**STATE ANATOMICAL BOARD, DISPOSAL OF DEAD BODIES**

**Cross References**

**Bodies**, use for teaching, see section 38-1417.

**Control of remains**, see sections 38-1425 to 38-1428.

**Eye tissue removal**, see section 71-4813.

**Funeral Directing and Embalming Practice Act**, see section 38-1401.

**Offenses relating to dead human bodies**, see sections 28-1301 and 28-1302.

**Organ and tissue donation**, hospital protocols, see section 71-4814.

**Pituitary gland removal**, see section 71-4813.

**Revised Uniform Anatomical Gift Act**, see section 71-4824.

**Unmarked Human Burial Sites and Skeletal Remains Protection Act**, see section 12-1201.

**Section**

- 71-1001. State Anatomical Board; members; powers and duties; State Anatomical Board Cash Fund; created; use; investment.
- 71-1002. Board; dead human bodies subject to burial or cremation at public expense; delivery to board; claimant of body; requirements.
- 71-1003. Board; dead human bodies; distribution.
- 71-1004. Board; dead human bodies; transportation.
- 71-1005. Board; bodies; examination.
- 71-1006. Violations; penalty.
- 71-1007. Board; purpose.

**71-1001 State Anatomical Board; members; powers and duties; State Anatomical Board Cash Fund; created; use; investment.**

The heads of the anatomy departments of the medical schools and colleges of this state, one professor of anatomy appointed by the head of the anatomy department from each medical school or college of this state, one professor of anatomy appointed from each dental school or college of this state, and one layperson appointed by the Department of Health and Human Services shall constitute the State Anatomical Board of the State of Nebraska for the distribution, delivery, and use of certain dead human bodies, described in section 71-1002, to and among such schools, colleges, and persons as are entitled thereto under the provisions of such section. The board shall have power to establish rules and regulations for its government and for the collection, storage, and distribution of dead human bodies for anatomical purposes. It shall have power to appoint and remove its officers and agents. It shall keep minutes of its meetings. It shall cause a record to be kept of all of its

transactions, of bodies received and distributed by it, and of the school, college, or person receiving every such body, and its records shall be open at all times to the inspection of each member of the board and to every county attorney within this state.

There is hereby created the State Anatomical Board Cash Fund. The fund shall be under the University of Nebraska Medical Center for accounting and budgeting purposes only. The fund shall consist of revenue collected by the State Anatomical Board and shall only be used to pay for costs of operating the board. 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 1929, c. 158, § 1, p. 551; C.S.1929, § 71-2801; R.S.1943, § 71-1001; Laws 1969, c. 570, § 1, p. 2314; Laws 1978, LB 583, § 1; Laws 1979, LB 98, § 2; Laws 1992, LB 860, § 2; Laws 1996, LB 1044, § 556; Laws 2007, LB296, § 464; Laws 2017, LB331, § 36.

**Cross References**

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

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

**71-1002 Board; dead human bodies subject to burial or cremation at public expense; delivery to board; claimant of body; requirements.**

(1) All public officers, agents, and servants of this state, of every county, city, township, district, and other municipal subdivision thereof, and of every almshouse, prison, morgue, hospital, or other institution, having charge, control, or possession of any dead human body which is not claimed within the time and in the manner provided by this section are required to immediately notify the State Anatomical Board, or such agent, school, college, or person as may be designated by the board, of the dead human body. Such institution shall, without fee or reward, surrender and deliver such dead human body to the board or to such agent, schools, colleges, physicians, and surgeons as may be designated by the board for anatomical use and study.

(2) The notice required by subsection (1) of this section is not required and the body does not have to be delivered to the board if (a) any person claims the body for burial within ten days after death, (b) the deceased was discharged from the military or naval service of the United States, or (c) an autopsy has been performed on the body.

(3) Any person may claim and receive such dead human body from the State Anatomical Board if (a) application in writing is made to the board for such body for the purpose of burial or cremation within thirty days after delivery to the board, (b) such claimant agrees in writing to assume the expense of burial or cremation, and (c) the board determines that such claim has been made in good faith and not for the purpose of claiming social security or other burial benefits payable for burial of the deceased or obtaining payment for the expense of embalming and burying the deceased.

(4) If the duly authorized officer or agent of the board deems any such body unfit for anatomical purposes, he or she shall notify the county commissioners of the county in which the death occurred, and the county commissioners shall then direct some person to take charge of such body and cause it to be buried

or cremated. The expense of such burial or cremation shall be fixed and paid by order of the county commissioners from any funds available for such purpose.

**Source:** Laws 1929, c. 158, § 2, p. 551; C.S.1929, § 71-2802; R.S.1943, § 71-1002; Laws 1969, c. 570, § 2, p. 2315; Laws 1971, LB 268, § 1; Laws 1972, LB 1256, § 1; Laws 1996, LB 1155, § 28; Laws 1998, LB 1354, § 6; Laws 2005, LB 54, § 15.

**71-1003 Board; dead human bodies; distribution.**

The State Anatomical Board, or its duly authorized officers or agents, may take and receive such dead bodies, and shall hold the same for a period of thirty days from the date of delivery, during which time any such body may be claimed, as provided in section 71-1002. The board shall distribute the bodies among the medical, chiropractic, osteopathic and dental schools and colleges, and physicians and surgeons designated by the board, under such rules and regulations as may be adopted by it. The number of bodies so distributed to the schools and colleges aforesaid shall be in proportion to the number of students matriculated in the first-year work of such schools and colleges. If there shall be more bodies than are required by such schools and colleges, the board, or its duly authorized officers, may, from time to time, designate physicians and surgeons to receive such bodies, and the number of bodies they may receive; *Provided*, that such physicians and surgeons have complied with all rules and regulations which the board may adopt for such disposition. All expenses incurred by the board in receiving, caring for and delivering any such body shall be paid by those receiving such body.

**Source:** Laws 1929, c. 158, § 3, p. 552; C.S.1929, § 71-2803; R.S.1943, § 71-1003; Laws 1971, LB 268, § 2.

**Cross References**

**Board of Funeral Directing and Embalming,** distribution to and use by, see section 38-1417.

**71-1004 Board; dead human bodies; transportation.**

The State Anatomical Board may employ a carrier or carriers for the transportation of bodies, referred to in sections 71-1001 to 71-1006, and may transport such bodies, or order them to be transported, under such rules and regulations as it may adopt.

**Source:** Laws 1929, c. 158, § 4, p. 553; C.S.1929, § 71-2804; R.S.1943, § 71-1004.

**71-1005 Board; bodies; examination.**

The State Anatomical Board, or its duly authorized officers or agents, shall have power to make an examination of any such dead body as may be necessary, and certify as to the cause of death.

**Source:** Laws 1929, c. 158, § 5, p. 553; C.S.1929, § 71-2805; R.S.1943, § 71-1005.

**71-1006 Violations; penalty.**

Every officer, agent or employee of this state, and every officer, agent or employee of any county, city, township, or other municipal subdivision thereof, and every other person, into whose possession the body of any such deceased person may come, who shall willfully neglect to notify the State Anatomical

Board, or its duly authorized officers or agents, of the existence of such body, or who shall refuse to deliver possession of such body to the board, or to its duly authorized officers or agents, or who shall mutilate, or permit such body to be mutilated, so that it is not valuable for anatomical purposes, or who shall refuse or neglect to perform any of the duties enjoined upon him by sections 71-1001 to 71-1006, shall be guilty of a Class V misdemeanor.

**Source:** Laws 1929, c. 158, § 6, p. 553; C.S.1929, § 71-2806; R.S.1943, § 71-1006; Laws 1977, LB 39, § 154.

#### **71-1007 Board; purpose.**

The purpose of the State Anatomical Board is to: (1) Provide for the orderly receipt, maintenance, distribution, and use of human bodies used for medical education and research; (2) insure that proper and considerate care is given to human bodies used for medical education and research; and (3) insure that an orderly and equitable procedure is used for the allocation of human bodies to colleges and universities in Nebraska which provide medical education and research.

**Source:** Laws 1979, LB 98, § 1.

### **ARTICLE 11**

#### **DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT**

##### **Cross References**

**Abuse**, report required, see section 28-372.  
**Admission when facilities are limited**, see section 83-338.  
**Aging and Disability Resource Center Act**, see section 68-1111.  
**Beatrice State Developmental Center**, see sections 83-217 to 83-227.02.  
**Behavioral Health Workforce Act**, see section 71-828.  
**Children and Family Behavioral Health Support Act**, see section 71-821.  
**Children's Behavioral Health Task Force**, see sections 43-4001 to 43-4003.  
**Community Corrections Act**, see section 47-619.  
**Contagious diseases**, see Chapter 71, article 5.  
**Cost of patient care**, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.  
**Department of Health and Human Services**, official names of institutions under supervision, see section 83-107.01.  
**Developmental Disabilities Services Act**, see section 83-1201.  
**Developmental disability regions**, see section 83-1,143.06.  
**Division of Developmental Disabilities**, see sections 81-3113 and 81-3116.  
**Fishing permit**, see section 37-424.  
**Health and Human Services Act**, see section 81-3110.  
**Health Care Facility Licensure Act**, see section 71-401.  
**Homestead exemption**, see section 77-3508.  
**Hunting permit**, see section 37-404.01.  
**ICF/DD Reimbursement Protection Act**, see section 68-1201.  
**Insurance coverage of mental health conditions**, see sections 44-791 to 44-795.  
**Mental Health Practice Act**, see section 38-2101.  
**Mistreatment of mentally ill person**, penalty, see section 83-356.  
**Nebraska Behavioral Health Services Act**, see section 71-801.  
**Nebraska Mental Health Commitment Act**, see section 71-901.  
**Office of Juvenile Services**, behavioral health programs and services, see section 43-407.  
**Patient expenses**, see sections 83-348 to 83-355 and 83-363 to 83-380.01.  
**Persons supposed mentally ill**, limitations on restraint of liberty, see section 83-357.  
**Persons with an intellectual disability**, see sections 83-381 to 83-390.  
**Protection and advocacy system for persons with developmental disabilities**, see sections 20-161 to 20-166.  
**Psychology Practice Act**, see section 38-3101.  
**Public Guardianship Act**, see section 30-4101.  
**Report of abuse**, required, see section 28-372.  
**Rural Behavioral Health Training and Placement Program Act**, see section 71-5680.  
**Sex Offender Commitment Act**, see section 71-1201.  
**Sex Offender Registration Act**, see section 29-4001.  
**Social services**, see section 68-1801 et seq.  
**State hospitals for the mentally ill**, see sections 83-305 to 83-357.  
**Uniform Controlled Substances Act**, see section 28-401.01.  
**Uniform Credentialing Act**, see section 38-101.

**DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT § 71-1102**

Section	
71-1101.	Act, how cited.
71-1102.	Public policy.
71-1103.	Purpose of act.
71-1104.	Definitions, where found.
71-1105.	Court, defined.
71-1106.	Department, defined.
71-1107.	Developmental disability, defined.
71-1108.	Independent mental health professional, defined.
71-1108.01.	Intellectual disability, defined.
71-1109.	Least restrictive alternative, defined.
71-1110.	Transferred to section 71-1108.01.
71-1111.	Petitioner, defined.
71-1112.	Risk analysis, defined.
71-1113.	Repealed. Laws 2017, LB333, § 14.
71-1114.	Subject, defined.
71-1115.	Threat of harm to others, defined.
71-1116.	Treatment, defined.
71-1117.	Petition; where filed; contents; evidentiary rules; applicability.
71-1118.	Subject; rights.
71-1119.	Emergency custody; application; court order; evaluation by department.
71-1120.	Emergency custody order; expedited hearing.
71-1121.	Petition and summons; service.
71-1122.	Petition; hearing; procedure; representation by legal counsel.
71-1123.	Subject; response to petition.
71-1124.	Burden of proof; court findings; dispositional hearing; when required.
71-1125.	Departmental plan; contents.
71-1126.	Dispositional hearing; considerations; court order.
71-1127.	Court-ordered custody and treatment; annual review hearings; procedure.
71-1128.	Review hearing; when authorized; notice.
71-1129.	Jurisdiction of court.
71-1130.	Findings under act; effect.
71-1131.	Costs; payment; public defender; appointment.
71-1132.	Treatment needs of subject; rights of subject or subject's guardian.
71-1133.	Juvenile; when subject to act.
71-1134.	Reports.

**71-1101 Act, how cited.**

Sections 71-1101 to 71-1134 shall be known and may be cited as the Developmental Disabilities Court-Ordered Custody Act.

**Source:** Laws 2005, LB 206, § 1; Laws 2013, LB23, § 29.

**71-1102 Public policy.**

The Legislature recognizes the right of all persons, including individuals with developmental disabilities, to enjoy personal liberty and freedom. It is the public policy of the State of Nebraska to encourage persons with developmental disabilities to voluntarily choose their own services. It is also the public policy of the State of Nebraska to use guardians, preferably family members, to make and support service and placement decisions when a person with developmental disabilities is determined by a court to be incompetent, but there are instances in which the threat of harm to other persons in society is sufficient that a court should balance the rights of such person with the interests of society and place care and custody of such person with the State of Nebraska for appropriate treatment and services.

**Source:** Laws 2005, LB 206, § 2.

**71-1103 Purpose of act.**

The purpose of the Developmental Disabilities Court-Ordered Custody Act is to provide a procedure for court-ordered custody and treatment for a person with developmental disabilities when he or she poses a threat of harm to others.

**Source:** Laws 2005, LB 206, § 3.

**71-1104 Definitions, where found.**

For purposes of the Developmental Disabilities Court-Ordered Custody Act, the definitions in sections 71-1105 to 71-1116 apply.

**Source:** Laws 2005, LB 206, § 4; Laws 2013, LB23, § 30.

**71-1105 Court, defined.**

Court means the district court in which a petition is filed pursuant to the Developmental Disabilities Court-Ordered Custody Act.

**Source:** Laws 2005, LB 206, § 5.

**71-1106 Department, defined.**

Department means the Department of Health and Human Services.

**Source:** Laws 2005, LB 206, § 6.

**71-1107 Developmental disability, defined.**

Developmental disability means a severe, chronic disability, including an intellectual disability, other than mental illness, which:

- (1) Is attributable to a mental or physical impairment unless the impairment is solely attributable to a severe emotional disturbance or persistent mental illness;
- (2) Is manifested before the age of twenty-two years;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in one of each of the following areas of adaptive functioning:
  - (a) Conceptual skills, including language, literacy, money, time, number concepts, and self-direction;
  - (b) Social skills, including interpersonal skills, social responsibility, self-esteem, gullibility, wariness, social problem solving, and the ability to follow laws and rules and to avoid being victimized; and
  - (c) Practical skills, including activities of daily living, personal care, occupational skills, health care, mobility, and the capacity for independent living; and
- (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized support, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth through the age of nine years who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without manifesting substantial functional limitations in three or more of the areas of adaptive functioning described in subdivision (4) of this section if the individual, without services

**DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT § 71-1115**

and support, has a high probability of manifesting such limitations in such areas later in life.

**Source:** Laws 2005, LB 206, § 7; Laws 2013, LB23, § 31; Laws 2017, LB333, § 1.

**71-1108 Independent mental health professional, defined.**

Independent mental health professional means a psychiatrist or psychologist with expertise in treating persons with developmental disabilities who has not previously been involved in the treatment of the subject in a significant way.

**Source:** Laws 2005, LB 206, § 8.

**71-1108.01 Intellectual disability, defined.**

Intellectual disability means significantly subaverage general intellectual functioning which is associated with significant impairments in adaptive functioning manifested before the age of twenty-two years. Significant subaverage general intellectual functioning shall refer to a score of seventy or below on a properly administered and valid intelligence quotient test.

**Source:** Laws 2005, LB 206, § 10; R.S.1943, (2009), § 71-1110; Laws 2013, LB23, § 32; Laws 2016, LB1039, § 1; Laws 2017, LB333, § 2.

**71-1109 Least restrictive alternative, defined.**

Least restrictive alternative means a placement and services provided in a manner no more restrictive of a subject's liberty and no more intrusive than necessary to provide appropriate treatment and protect society.

**Source:** Laws 2005, LB 206, § 9.

**71-1110 Transferred to section 71-1108.01.**

**71-1111 Petitioner, defined.**

Petitioner means the Attorney General or the county attorney who files a petition under section 71-1117.

**Source:** Laws 2005, LB 206, § 11.

**71-1112 Risk analysis, defined.**

Risk analysis means a comprehensive evaluation of a person's potential for future dangerous behavior towards others, including recommendations to minimize the likelihood of harm to others in the least restrictive alternative.

**Source:** Laws 2005, LB 206, § 12.

**71-1113 Repealed. Laws 2017, LB333, § 14.**

**71-1114 Subject, defined.**

Subject means a person who is named in a petition filed under the Developmental Disabilities Court-Ordered Custody Act.

**Source:** Laws 2005, LB 206, § 14.

**71-1115 Threat of harm to others, defined.**

Threat of harm to others means a significant likelihood of substantial harm to others as evidenced by one or more of the following: Having inflicted or attempted to inflict serious bodily injury on another; having committed an act that would constitute a sexual assault or attempted sexual assault; having committed lewd and lascivious conduct toward a child; having set or attempted to set fire to another person or to any property of another without the owner's consent; or, by the use of an explosive, having damaged or destroyed property, put another person at risk of harm, or injured another person.

**Source:** Laws 2005, LB 206, § 15.

The Developmental Disabilities Court-Ordered Custody Act does not require proof of future harm before the court determines that the subject is in need of court-ordered custody and

treatment and, therefore, does not violate due process. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

#### **71-1116 Treatment, defined.**

Treatment means the support and services which will assist a subject to acquire the skills and behaviors needed to function in society so that the subject does not pose a threat of harm to others and is able to cope with his or her personal needs and the demands of his or her environment.

**Source:** Laws 2005, LB 206, § 16.

#### **71-1117 Petition; where filed; contents; evidentiary rules; applicability.**

The Attorney General or county attorney may file a petition in the district court of the county in which a subject resides or the county in which an alleged act constituting a threat of harm to others occurs. The petition shall allege that the subject is a person in need of court-ordered custody and treatment and shall contain the following:

- (1) The name and address of the subject, if known;
- (2) A statement that the subject is believed to be eighteen years of age or older or that the subject is a juvenile who will become eighteen years of age within ninety days after the date of filing the petition;
- (3) The name and address of the subject's guardian or closest relative, if known;
- (4) The name and address of any other person having custody and control of the subject, if known;
- (5) A statement that the subject has a developmental disability and poses a threat of harm to others;
- (6) The factual basis to support the allegation that the subject has a developmental disability; and
- (7) The factual basis to support the allegation that the subject poses a threat of harm to others.

The Nebraska Evidence Rules shall apply to proceedings under the Developmental Disabilities Court-Ordered Custody Act unless otherwise specified.

**Source:** Laws 2005, LB 206, § 17.

#### **Cross References**

**Nebraska Evidence Rules**, see section 27-1103.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, there-

fore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).



**71-1118 Subject; rights.**

A subject has the following rights pursuant to the Developmental Disabilities Court-Ordered Custody Act:

- (1) The right to be represented by legal counsel and to have counsel appointed if the subject cannot afford to pay the cost of counsel;
- (2) The right to have a guardian ad litem appointed to act on the subject's behalf if the court determines that he or she is unable to assist in his or her own defense;
- (3) The right to have a timely hearing on the merits of the petition before a district court judge;
- (4) The right to have reasonable continuances, for good cause shown, in order to properly prepare for a hearing on the petition;
- (5) The right to testify, subpoena witnesses, require testimony before the court, and offer evidence;
- (6) The right to confront and cross-examine witnesses;
- (7) The right to have an expert witness of the subject's own choice evaluate the subject, testify, and provide recommendations to the court and to have such expert paid for by the county if the subject cannot afford the costs of such expert; and
- (8) The right to have a transcript prepared for the purpose of an appeal, to appeal a final decision of the court, and to have the costs of such transcript and appeal paid by the county if the subject cannot afford such costs.

**Source:** Laws 2005, LB 206, § 18.

**71-1119 Emergency custody; application; court order; evaluation by department.**

(1) The petitioner may apply to the court to have the subject taken into emergency custody and held pending a hearing on the petition and disposition pursuant to sections 71-1122 to 71-1126. The application for emergency custody shall be supported by affidavit or sworn testimony which establishes probable cause to believe that (a) the subject is eighteen years of age or older or will become eighteen years of age within ninety days after the date of filing the application, (b) the subject is a person with a developmental disability, (c) the subject poses a threat of harm to others, and (d) if the application is not granted, substantial harm to others is likely to occur before a trial and disposition of the matter can be completed.

(2) If the court concludes that there is probable cause to grant the application pursuant to subsection (1) of this section, the court may issue an ex parte order granting the application. The department shall provide a recommendation of an appropriate treatment program for the subject which has available space and is willing to hold the subject in emergency custody. The court shall direct the sheriff or any other peace officer to take the subject into emergency custody and deliver him or her to the program ordered by the court to be held pending further hearing and order of the court. The order shall establish terms and conditions of the emergency placement as appropriate under the Developmental Disabilities Court-Ordered Custody Act. The department shall evaluate the subject within seven days after the date the application is granted to determine

if the subject is a person with one or more developmental disabilities and poses a threat of harm to others. The results of the evaluation shall be provided to the court and all parties.

**Source:** Laws 2005, LB 206, § 19.

**71-1120 Emergency custody order; expedited hearing.**

If an emergency custody order is issued by the court under section 71-1119, the subject has a right to an expedited hearing to challenge the order. At such hearing, the petitioner has the burden of showing that there is probable cause to continue the emergency custody order. Such hearing shall be held within ten days after the date the subject is taken into emergency custody unless such requirement is waived by the subject or the subject is granted a continuance based upon his or her request. The Nebraska Evidence Rules do not apply at a hearing under this section. Upon conclusion of such hearing, the court may continue, modify, or vacate the emergency custody order.

**Source:** Laws 2005, LB 206, § 20.

**Cross References**

Nebraska Evidence Rules, see section 27-1103.

**71-1121 Petition and summons; service.**

The petitioner shall cause notice of the petition and summons to be served on the subject, the subject's attorney, if any, the subject's guardian, if any, the subject's closest relative, if known, any other person having custody and control of the subject, if known, and the department.

**Source:** Laws 2005, LB 206, § 21.

**71-1122 Petition; hearing; procedure; representation by legal counsel.**

When a petition is filed under the Developmental Disabilities Court-Ordered Custody Act, the court shall ensure that the subject is represented by legal counsel and shall set a time and date for a hearing on the petition. The clerk of the court shall provide notice of the date and time of such hearing to the subject, the subject's legal counsel, the subject's guardian, if any, the subject's closest relative, if known, any other person having custody and control of the subject, if known, the petitioner, and the department. The notice of hearing on the petition shall state the date, time, and location of the hearing and shall contain a list of the subject's rights under section 71-1118. The court may order an examination and evaluation of the subject to be completed by the department prior to the hearing, and the results shall be provided to all parties. The hearing on the petition shall be held within ninety days after the date of filing the petition or, if the subject is in emergency custody pursuant to section 71-1119, as soon as practicable but not later than forty-five days from the date when the subject was taken into emergency custody unless continuances are granted by the court upon the subject's motion.

**Source:** Laws 2005, LB 206, § 22.

**71-1123 Subject; response to petition.**

The subject may admit or deny the allegations of the petition or choose to not answer. If the subject denies the allegations of the petition, the court shall proceed to conduct a hearing on the petition. If the subject is unable to

**DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT § 71-1126**

understand the nature and possible consequences of the proceedings or chooses to not answer, the court shall enter a denial of the allegations of the petition on the subject's behalf and shall proceed to conduct a hearing on the petition. If the subject admits to the allegations of the petition, the court shall determine whether the admission is free and voluntary and, if the court finds a factual basis to support the admission, may find the subject to be a person in need of court-ordered custody and treatment.

**Source:** Laws 2005, LB 206, § 23.

**71-1124 Burden of proof; court findings; dispositional hearing; when required.**

The petitioner has the burden to prove by clear and convincing evidence that the subject is a person in need of court-ordered custody and treatment. The court shall make specific findings of fact and state its conclusions of law.

If after the hearing is complete the court finds that the subject is not a person in need of court-ordered custody and treatment, it shall dismiss the petition and immediately release the subject from any emergency custody order.

If after the hearing is complete the court finds that the subject is a person in need of court-ordered custody and treatment, the court shall order the department to evaluate the subject and submit a plan for custody and treatment of the subject in the least restrictive alternative within thirty days and provide a copy to all parties in interest. The court shall set the matter for dispositional hearing within fifteen days after receipt of the department's plan, unless continued for good cause shown.

**Source:** Laws 2005, LB 206, § 24.

The Developmental Disabilities Court-Ordered Custody Act provides procedures and evidentiary standards which protect an individual's constitutionally protected liberty interest and, there-

fore, does not violate the subject's due process rights. In re Interest of C.R., 281 Neb. 75, 793 N.W.2d 330 (2011).

**71-1125 Departmental plan; contents.**

The plan submitted by the department pursuant to section 71-1124 shall include the evaluation and recommendations of an independent mental health professional. The independent mental health professional may have been previously involved in evaluating the subject and advising the court pursuant to the Developmental Disabilities Court-Ordered Custody Act and may also be an employee of or a contractor with the department. The plan shall include: A history of the subject's past treatment, if any; a comprehensive evaluation of the subject's developmental disabilities; a risk analysis; the treatment and staffing requirements of the subject; appropriate terms and conditions to provide custody and treatment of the subject in the least restrictive alternative; and an appropriate treatment program that is capable of providing and willing to provide treatment in accordance with the plan.

**Source:** Laws 2005, LB 206, § 25.

**71-1126 Dispositional hearing; considerations; court order.**

At the dispositional hearing, the court shall consider the plan submitted pursuant to section 71-1125, the arguments of the parties, and any other relevant evidence. The Nebraska Evidence Rules shall not apply at the dispositional hearing. The plan shall be approved by the court unless it is shown by a preponderance of the evidence that the plan is not the least restrictive alterna-

tive for the subject. After the hearing is completed, the court shall issue an order of disposition placing custody of the subject with the department and setting forth the treatment plan for the subject. The court shall establish the duration of the court-ordered custody and treatment of the subject, but such duration under the initial order shall not be longer than one year.

**Source:** Laws 2005, LB 206, § 26.

**Cross References**

**Nebraska Evidence Rules**, see section 27-1103.

**71-1127 Court-ordered custody and treatment; annual review hearings; procedure.**

The court shall hold annual review hearings of each order of disposition issued under section 71-1126 prior to the expiration date of such order. Prior to the annual review hearing, the department shall submit an updated plan for custody and treatment of the subject. It shall be the burden of the state to show by clear and convincing evidence that court-ordered custody and treatment continues to be necessary. The court shall determine whether the evidence supports continuing the court-ordered custody and treatment of the subject. At the review hearing, the court shall consider the evidence received at the original and any subsequent hearings, the plan and updates submitted by the department, progress reports and recommendations from the treatment program, and any other relevant evidence. Following the review hearing, the court may continue or modify the court-ordered custody and treatment or may vacate such custody and treatment and dismiss the matter.

**Source:** Laws 2005, LB 206, § 27.

**71-1128 Review hearing; when authorized; notice.**

(1) If at any time it appears that the subject no longer poses a threat of harm to others, any party may file a motion for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by a preponderance of the evidence that the subject no longer poses a threat of harm to others. If it is shown that the subject no longer poses a threat of harm to others, the court shall enter an order dismissing the case and immediately release the subject.

(2) If at any time it appears that (a) the plan submitted under section 71-1124 or 71-1127 is not sufficient to protect society or the subject or (b) the circumstances upon which the plan was based have changed significantly, any party may file a motion, to be granted for good cause shown, for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by clear and convincing evidence that the court-ordered custody and treatment of the subject should be modified or vacated.

(3) Upon the filing of a motion for a review hearing pursuant to this section, the department shall immediately provide notice to the Attorney General and the county attorney who filed a petition under section 71-1117 if the proceeding by which the subject is placed in court-ordered custody included evidence of a sex offense as defined in section 83-174.01 or if any prior proceedings resulting

**DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT § 71-1133**

in a civil commitment or court-ordered custody included evidence of a sex offense as defined in section 83-174.01.

**Source:** Laws 2005, LB 206, § 28; Laws 2006, LB 1199, § 54.

**71-1129 Jurisdiction of court.**

A court which finds a subject to be in need of court-ordered custody and treatment shall have concurrent jurisdiction to hear and decide issues regarding appointment or replacement of a guardian for as long as the subject is in court-ordered custody and treatment.

**Source:** Laws 2005, LB 206, § 29.

**71-1130 Findings under act; effect.**

No findings under the Developmental Disabilities Court-Ordered Custody Act, including a finding that a person is in need of court-ordered custody and treatment, shall lead to a presumption that such person is incompetent to stand trial.

**Source:** Laws 2005, LB 206, § 30.

**71-1131 Costs; payment; public defender; appointment.**

If the subject cannot afford to pay, the county shall pay court costs, costs of emergency custody, and related expenses for a petition filed pursuant to the Developmental Disabilities Court-Ordered Custody Act, including the costs of legal counsel appointed to represent the subject and any expert hired to evaluate and testify on behalf of the subject. In counties having a public defender, the court may appoint the public defender as legal counsel for the subject. The county shall be responsible for the cost of transporting the subject to and from court hearings under the act and to any emergency custody or other custody ordered under the act. The department shall pay the costs of the department's evaluations of the subject, the costs of the plans completed by the department and the independent mental health professional, and the costs of the court-ordered custody and treatment of the subject following an order of disposition, except as provided by sections 83-363 to 83-380.

**Source:** Laws 2005, LB 206, § 31.

**71-1132 Treatment needs of subject; rights of subject or subject's guardian.**

Jurisdiction of the court under the Developmental Disabilities Court-Ordered Custody Act does not prohibit a subject or a subject's guardian from consenting to medical care or to a more restrictive setting, on a temporary basis, than that ordered by the court to satisfy the treatment needs of the subject.

**Source:** Laws 2005, LB 206, § 32.

**71-1133 Juvenile; when subject to act.**

In the case of a juvenile in need of court-ordered custody and treatment, a petitioner may file a petition and begin proceedings under the Developmental Disabilities Court-Ordered Custody Act within ninety days before the juvenile's eighteenth birthday. No order under the act shall be effective until the subject reaches his or her eighteenth birthday.

**Source:** Laws 2005, LB 206, § 33.

**71-1134 Reports.**

(1) The department in collaboration with the Advisory Committee on Developmental Disabilities established under section 83-1212.01 shall submit quarterly reports to the court, all parties of record, and the guardian of any subject in court-ordered custody.

(2) The department shall submit electronically an annual report to the Legislature regarding the implementation of the Developmental Disabilities Court-Ordered Custody Act. Such reports shall not contain any name, address, or other identifying factors or other confidential information regarding any subject.

**Source:** Laws 2005, LB 206, § 34; Laws 2012, LB782, § 110.

**ARTICLE 12**

**SEX OFFENDER COMMITMENT AND TREATMENT**

**Cross References**

- Abuse, report required, see section 28-372.
- Admission when facilities are limited, see section 83-338.
- Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
- Behavioral Health Workforce Act, see section 71-828.
- Blanks for warrants, certificates, and other forms, see section 83-336.
- Children and Family Behavioral Health Support Act, see section 71-821.
- Children’s Behavioral Health Task Force, see sections 43-4001 to 43-4003.
- Community Corrections Act, see section 47-619.
- Cost of patient care, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
- Department of Health and Human Services, official names of institutions under supervision, see section 83-107.01.
- Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.
- Division of Behavioral Health, see sections 81-3113 and 81-3116.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
- Mental Health Practice Act, see section 38-2101.
- Mistreatment of mentally ill person, penalty, see section 83-356.
- Nebraska Behavioral Health Services Act, see section 71-801.
- Nebraska Mental Health Commitment Act, see section 71-901.
- Office of Juvenile Services, behavioral health programs and services, see section 43-407.
- Patient expenses, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
- Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.
- Persons with an intellectual disability, see sections 83-381 to 83-390.
- Psychology Practice Act, see section 38-3101.
- Report of abuse, required, see section 28-372.
- Rural Behavioral Health Training and Placement Program Act, see section 71-5680.
- Sex Offender Registration Act, see section 29-4001.
- State hospitals for the mentally ill, see sections 83-305 to 83-357.
- Uniform Controlled Substances Act, see section 28-401.01.
- Uniform Credentialing Act, see section 38-101.
- Veterans, treatment, see section 80-601.
- Victim notification, see section 81-1850.

**(a) SEX OFFENDER COMMITMENT ACT**

- Section
- 71-1201. Act, how cited.
- 71-1202. Purpose of act.
- 71-1203. Terms, defined.
- 71-1204. Emergency protective custody; dangerous sex offender determination; written certificate; contents.
- 71-1205. Person believes another to be a dangerous sex offender; notify county attorney; petition; when; contents.
- 71-1206. Mental health board proceedings; commencement; petition; custody of subject; conditions; dismissal; when.
- 71-1207. Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.
- 71-1208. Hearing; mental health board; duties.

## Section

- 71-1209. Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.
- 71-1210. Subject; custody pending entry of treatment order.
- 71-1211. Dangerous sex offender; board; issue warrant; contents; immunity.
- 71-1212. Inpatient treatment; subject taken to facility; procedure.
- 71-1213. Mental health board; execution of warrants; costs; procedure.
- 71-1214. Treatment order of mental health board; appeal; final order of district court; appeal.
- 71-1215. Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.
- 71-1216. Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.
- 71-1217. Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.
- 71-1218. Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.
- 71-1219. Mental health board; review hearing; order discharge or change treatment disposition; when.
- 71-1220. Regional center or treatment facility; administrator; discharge of involuntary patient; notice.
- 71-1221. Mental health board; notice of release; hearing.
- 71-1222. Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.
- 71-1223. Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.
- 71-1224. Rights of subjects.
- 71-1225. Mental health board hearings; closed to public; exception; where conducted.
- 71-1226. Hearings; rules of evidence applicable.

## (b) TREATMENT AND MANAGEMENT SERVICES

- 71-1227. Repealed. Laws 2009, LB 154, § 27.
- 71-1228. Repealed. Laws 2009, LB 154, § 27.

## (a) SEX OFFENDER COMMITMENT ACT

**71-1201 Act, how cited.**

Sections 71-1201 to 71-1226 shall be known and may be cited as the Sex Offender Commitment Act.

**Source:** Laws 2006, LB 1199, § 57.

**71-1202 Purpose of act.**

The purpose of the Sex Offender Commitment Act is to provide for the court-ordered treatment of sex offenders who have completed their sentences but continue to pose a threat of harm to others. It is the public policy of the State of Nebraska that dangerous sex offenders be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Sex Offender Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

**Source:** Laws 2006, LB 1199, § 58.

This section does not violate the constitutional provisions relating to equal protection, special legislation, separation of powers, bills of attainder, ex post facto, or double jeopardy. In re Interest of A.M., 281 Neb. 482, 797 N.W.2d 233 (2011).

The Sex Offender Commitment Act applies specifically to convicted sex offenders who have completed their jail sentences but continue to pose a threat of harm to others. In re Interest of G.H., 279 Neb. 708, 781 N.W.2d 438 (2010).

The Sex Offender Commitment Act is not excessive in relation to its assigned nonpunitive purpose, which is to protect the public and provide treatment to dangerous sex offenders who are likely to reoffend. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

### **71-1203 Terms, defined.**

For purposes of the Sex Offender Commitment Act:

(1) The definitions found in sections 71-905, 71-906, 71-907, 71-910, 71-911, and 83-174.01 apply;

(2) Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee;

(3) Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (a) taking prescribed medication, (b) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (c) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs;

(4) Subject means any person concerning whom (a) a certificate has been filed under section 71-1204, (b) a certificate has been filed under section 71-919 and such person is held pursuant to subdivision (2)(b) of section 71-919, or (c) a petition has been filed under the Sex Offender Commitment Act. Subject does not include any person under eighteen years of age unless such person is an emancipated minor; and

(5) Treatment facility means a facility which provides services for persons who are dangerous sex offenders.

**Source:** Laws 2006, LB 1199, § 59.

The explicit purpose of the Sex Offender Commitment Act is to protect the public from sex offenders who continue to pose a threat of harm to others. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

### **71-1204 Emergency protective custody; dangerous sex offender determination; written certificate; contents.**

(1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is a dangerous sex offender shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;



(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is a dangerous sex offender and the clinical basis for such opinion.

**Source:** Laws 2006, LB 1199, § 60.

**71-1205 Person believes another to be a dangerous sex offender; notify county attorney; petition; when; contents.**

(1) Any person who believes that another person is a dangerous sex offender may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the county attorney shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska, if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is a dangerous sex offender;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, criminal convictions, attempts, or threats which shall be described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

**Source:** Laws 2006, LB 1199, § 61.

**71-1206 Mental health board proceedings; commencement; petition; custody of subject; conditions; dismissal; when.**

(1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 71-1205 or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-919 or the administrator of the treatment facility having charge of the subject of the intention of the county attorney to file such petition. The county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 71-1205 may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is a dangerous sex offender as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of . . . . , Alleged to be a Dangerous Sex Offender. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 71-1208, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

**Source:** Laws 2006, LB 1199, § 62.

**71-1207 Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.**

Upon the filing of the petition under section 71-1205, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections 71-943 to 71-960, and a list of the names, addresses, and telephone numbers of mental health professionals in the immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. The failure of a subject to appear as required under this section shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody.

**Source:** Laws 2006, LB 1199, § 63.

The 7-day time limit for holding a hearing under this section is directory, not mandatory. *D.I. v. Gibson*, 291 Neb. 554, 867 N.W.2d 284 (2015).

The Sex Offender Commitment Act requires service of a summons upon the subject which fixes a time for the hearing

before a mental health board within 7 calendar days after the subject has been taken into emergency protective custody. *Condoluci v. State*, 18 Neb. App. 112, 775 N.W.2d 196 (2009).

#### **71-1208 Hearing; mental health board; duties.**

A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is a dangerous sex offender as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall proceed to enter a treatment order pursuant to section 71-1209. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

**Source:** Laws 2006, LB 1199, § 64.

#### **71-1209 Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.**

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is a dangerous sex offender and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01.

(2) If the mental health board finds that the subject is not a dangerous sex offender, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is a dangerous sex offender but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall, within forty-eight hours, (a) order the

subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

**Source:** Laws 2006, LB 1199, § 65.

Under subsection (1)(b) of this section, the State's burden to prove that "neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice" was not met when the

State provided evidence only of the treatment that would be recommended if the subject were to remain within the Department of Correctional Services. In re Interest of O.S., 277 Neb. 577, 763 N.W.2d 723 (2009).

#### **71-1210 Subject; custody pending entry of treatment order.**

(1) At the conclusion of a mental health board hearing under section 71-1208 and prior to the entry of a treatment order by the board under section 71-1209, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in subdivision (1) of section 83-174.01 and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order.

**Source:** Laws 2006, LB 1199, § 66.

**71-1211 Dangerous sex offender; board; issue warrant; contents; immunity.**

If the mental health board finds the subject to be a dangerous sex offender and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Sex Offender Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility.

**Source:** Laws 2006, LB 1199, § 67.

**71-1212 Inpatient treatment; subject taken to facility; procedure.**

When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 71-1211, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person.

**Source:** Laws 2006, LB 1199, § 68.

**71-1213 Mental health board; execution of warrants; costs; procedure.**

(1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and

shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Sex Offender Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

**Source:** Laws 2006, LB 1199, § 69.

**71-1214 Treatment order of mental health board; appeal; final order of district court; appeal.**

The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 71-1209 to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

**Source:** Laws 2006, LB 1199, § 70.

**71-1215 Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.**

(1) Any treatment order entered by a mental health board under section 71-1209 shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or personality disorder, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

**Source:** Laws 2006, LB 1199, § 71.

**71-1216 Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.**

The person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

**Source:** Laws 2006, LB 1199, § 72.

**71-1217 Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.**

(1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or personality disorder or the level of risk posed to the public. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2)(a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any

other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

**Source:** Laws 2006, LB 1199, § 73.

**71-1218 Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.**

The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Sex Offender Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

**Source:** Laws 2006, LB 1199, § 74.

**71-1219 Mental health board; review hearing; order discharge or change treatment disposition; when.**

(1) Upon the filing of a periodic report under section 71-1216, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 71-1221 or 71-1222, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-1216 to the satisfaction of the board that (a) the subject's mental illness or personality disorder has been successfully treated or managed to the extent that the subject no longer poses a threat to the public or (b) a less restrictive



treatment alternative exists for the subject which does not increase the risk that the subject will commit another sex offense. When discharge or a change in disposition is in issue, due process protections afforded under the Sex Offender Commitment Act shall attach to the subject.

**Source:** Laws 2006, LB 1199, § 75.

A hearing under subsection (1) of this section is a special proceeding within the ordinary meaning of the term. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

Denial of a motion for reconsideration under subsection (1) of this section is a final, appealable order. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

Once the subject of a petition has exercised his or her right to a review hearing, and asserted that there are less restrictive treatment alternatives available, the State is required to present clear and convincing evidence that a less restrictive treatment alternative is inappropriate. At that point, the subject may

further rebut the State's evidence. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

The State bears the burden to show by clear and convincing evidence that the subject remains mentally ill and dangerous. Under the plain language of this section, a mental health board must determine whether the subject's mental illness or personality disorder has been "successfully treated or managed," which necessarily requires the board to review and rely upon the original reason for commitment. In re Interest of D.I., 281 Neb. 917, 799 N.W.2d 664 (2011).

**71-1220 Regional center or treatment facility; administrator; discharge of involuntary patient; notice.**

When the administrator of any regional center or treatment facility for the treatment of dangerous sex offenders determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

**Source:** Laws 2006, LB 1199, § 76.

**71-1221 Mental health board; notice of release; hearing.**

A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a dangerous sex offender and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Sex Offender Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

**Source:** Laws 2006, LB 1199, § 77.

**71-1222 Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.**

The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Sex Offender Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is a dangerous sex offender, the board shall so find and shall within forty-eight

hours enter an order of final disposition providing for the treatment of such person in accordance with section 71-1209.

**Source:** Laws 2006, LB 1199, § 78.

**71-1223 Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.**

When any person receiving treatment at a treatment facility or program for dangerous sex offenders pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall issue the warrant of the board directed to the sheriff of the county for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in the section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

**Source:** Laws 2006, LB 1199, § 79.

**71-1224 Rights of subjects.**

In addition to the rights granted subjects by any other provisions of the Sex Offender Commitment Act, such subjects shall be entitled to the rights provided in sections 71-943 to 71-960 during proceedings concerning the subjects under the act.

**Source:** Laws 2006, LB 1199, § 80.

**71-1225 Mental health board hearings; closed to public; exception; where conducted.**

All mental health board hearings under the Sex Offender Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

**Source:** Laws 2006, LB 1199, § 81.

**71-1226 Hearings; rules of evidence applicable.**

The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Sex Offender Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

**Source:** Laws 2006, LB 1199, § 82.

## (b) TREATMENT AND MANAGEMENT SERVICES

**71-1227 Repealed. Laws 2009, LB 154, § 27.**

**71-1228 Repealed. Laws 2009, LB 154, § 27.**

## ARTICLE 13

## FUNERAL DIRECTORS, EMBALMING, AND CREMATION

## Cross References

**Burial Pre-Need Sale Act**, see section 12-1101.  
**Casket sales**, regulations, see section 71-609.  
**Coroner**, powers and duties, see section 23-1801 et seq.  
**Death certificate**, duties, see section 71-605 et seq.  
**Disposal of bodies**, see section 71-1002 et seq.  
**Embalming fluids containing arsenic or strychnine**, use prohibited, see section 71-2510.01.  
**Eye tissue**, removal, see section 71-4813.  
**Funeral Directing and Embalming Practice Act**, see section 38-1401.  
**Picketing of a funeral**, see section 28-1320.01 et seq.  
**Revised Uniform Anatomical Gift Act**, see section 71-4824.  
**Right of disposition of remains and funeral arrangements**, see sections 30-2223 and 30-2462.  
**State Anatomical Board**, see section 71-1001 et seq.  
**Uniform Credentialing Act**, see section 38-101.

## (a) FUNERAL DIRECTORS AND EMBALMING

Section	
71-1301.	Transferred to section 38-1402.
71-1302.	Transferred to section 38-1414.
71-1303.	Transferred to section 38-1415.
71-1304.	Transferred to section 38-1416.
71-1305.	Transferred to section 38-1417.
71-1306.	Transferred to section 38-1418.
71-1307.	Repealed. Laws 1957, c. 295, § 15.
71-1308.	Repealed. Laws 1957, c. 295, § 15.
71-1309.	Repealed. Laws 1957, c. 295, § 15.
71-1310.	Repealed. Laws 1957, c. 295, § 15.
71-1311.	Repealed. Laws 1957, c. 295, § 15.
71-1312.	Repealed. Laws 1957, c. 295, § 15.
71-1313.	Repealed. Laws 1957, c. 295, § 15.
71-1314.	Repealed. Laws 1957, c. 295, § 15.
71-1315.	Repealed. Laws 1957, c. 295, § 15.
71-1316.	Repealed. Laws 1957, c. 295, § 15.
71-1317.	Repealed. Laws 1957, c. 295, § 15.
71-1318.	Repealed. Laws 1957, c. 295, § 15.
71-1319.	Repealed. Laws 1957, c. 295, § 15.
71-1320.	Repealed. Laws 1957, c. 295, § 15.
71-1321.	Repealed. Laws 1957, c. 295, § 15.
71-1322.	Repealed. Laws 1957, c. 295, § 15.
71-1323.	Repealed. Laws 1957, c. 295, § 15.
71-1324.	Repealed. Laws 1957, c. 295, § 15.
71-1325.	Repealed. Laws 1993, LB 187, § 39.
71-1326.	Repealed. Laws 2007, LB 463, § 1319.
71-1327.	Transferred to section 38-1419.
71-1327.01.	Transferred to section 38-1420.
71-1328.	Repealed. Laws 1993, LB 187, § 39.
71-1329.	Repealed. Laws 2007, LB 463, § 1319.
71-1330.	Repealed. Laws 1993, LB 187, § 39.
71-1331.	Transferred to section 38-1423.
71-1332.	Repealed. Laws 2007, LB 463, § 1319.
71-1333.	Transferred to section 38-1424.
71-1333.01.	Repealed. Laws 2007, LB 463, § 1319.
71-1333.02.	Repealed. Laws 2007, LB 463, § 1319.
71-1333.03.	Repealed. Laws 2007, LB 463, § 1319.

## PUBLIC HEALTH AND WELFARE

### Section

- 71-1334. Repealed. Laws 1988, LB 1100, § 185.
- 71-1335. Repealed. Laws 1988, LB 1100, § 185.
- 71-1336. Repealed. Laws 2003, LB 242, § 154.
- 71-1337. Repealed. Laws 1991, LB 10, § 7.
- 71-1338. Repealed. Laws 1991, LB 10, § 7.
- 71-1339. Transferred to section 38-1425.
- 71-1340. Transferred to section 38-1426.
- 71-1341. Transferred to section 38-1427.
- 71-1342. Repealed. Laws 1986, LB 643, § 25.
- 71-1343. Repealed. Laws 1986, LB 643, § 25.
- 71-1344. Repealed. Laws 1986, LB 643, § 25.
- 71-1345. Repealed. Laws 2007, LB 463, § 1319.
- 71-1346. Transferred to section 38-1428.
- 71-1347. Repealed. Laws 2002, LB 1021, § 111.
- 71-1348. Repealed. Laws 1993, LB 187, § 39.
- 71-1349. Repealed. Laws 2002, LB 1021, § 111.
- 71-1350. Repealed. Laws 2002, LB 1021, § 111.
- 71-1351. Repealed. Laws 2002, LB 1021, § 111.
- 71-1352. Repealed. Laws 2002, LB 1021, § 111.
- 71-1353. Repealed. Laws 2002, LB 1021, § 111.
- 71-1354. Repealed. Laws 2007, LB 463, § 1319.

### (b) CREMATION OF HUMAN REMAINS ACT

- 71-1355. Act, how cited.
- 71-1356. Terms, defined.
- 71-1357. Crematory; license required.
- 71-1358. Crematory; building and location requirements.
- 71-1359. License; application; requirements; fee.
- 71-1360. License; expiration.
- 71-1361. Crematory; change in location, ownership, or name; application; requirements; fee.
- 71-1362. Provisional license.
- 71-1363. Licensure; fees.
- 71-1364. Department; inspection; report; duties; noncompliance; procedure.
- 71-1365. Complaints; department; duties; confidentiality; immunity.
- 71-1366. Imminent danger; department; powers.
- 71-1367. Deny or refuse to renew license; disciplinary action; grounds.
- 71-1368. Disciplinary actions; fine; disposition.
- 71-1369. Appeal.
- 71-1370. License; reinstatement or relicensure.
- 71-1371. Nuisance; abatement; acts prohibited; penalty.
- 71-1372. Injunction; authorized.
- 71-1373. Cremation; right to authorize.
- 71-1374. Crematory authority; delivery receipt form; duties.
- 71-1375. Crematory operation; limitations.
- 71-1376. Crematory authority; operation; requirements.
- 71-1377. Cremation authorization form; required; contents.
- 71-1378. Cremation authorization form; signature.
- 71-1379. Potentially hazardous implant or condition; jewelry or other valuables; requirements.
- 71-1380. Dispute; crematory authority or funeral establishment; powers and duties.
- 71-1381. Cremated remains; how treated.
- 71-1382. Cremated remains; final disposition.
- 71-1382.01. Cremated remains; veteran or spouse or dependent of veteran; procedures; final disposition; records; immunity.
- 71-1383. Rules and regulations.
- 71-1384. Crematory authority; bylaws.
- 71-1385. Act; how construed.

## (a) FUNERAL DIRECTORS AND EMBALMING

- 71-1301 Transferred to section 38-1402.
- 71-1302 Transferred to section 38-1414.
- 71-1303 Transferred to section 38-1415.
- 71-1304 Transferred to section 38-1416.
- 71-1305 Transferred to section 38-1417.
- 71-1306 Transferred to section 38-1418.
- 71-1307 Repealed. Laws 1957, c. 295, § 15.
- 71-1308 Repealed. Laws 1957, c. 295, § 15.
- 71-1309 Repealed. Laws 1957, c. 295, § 15.
- 71-1310 Repealed. Laws 1957, c. 295, § 15.
- 71-1311 Repealed. Laws 1957, c. 295, § 15.
- 71-1312 Repealed. Laws 1957, c. 295, § 15.
- 71-1313 Repealed. Laws 1957, c. 295, § 15.
- 71-1314 Repealed. Laws 1957, c. 295, § 15.
- 71-1315 Repealed. Laws 1957, c. 295, § 15.
- 71-1316 Repealed. Laws 1957, c. 295, § 15.
- 71-1317 Repealed. Laws 1957, c. 295, § 15.
- 71-1318 Repealed. Laws 1957, c. 295, § 15.
- 71-1319 Repealed. Laws 1957, c. 295, § 15.
- 71-1320 Repealed. Laws 1957, c. 295, § 15.
- 71-1321 Repealed. Laws 1957, c. 295, § 15.
- 71-1322 Repealed. Laws 1957, c. 295, § 15.
- 71-1323 Repealed. Laws 1957, c. 295, § 15.
- 71-1324 Repealed. Laws 1957, c. 295, § 15.
- 71-1325 Repealed. Laws 1993, LB 187, § 39.
- 71-1326 Repealed. Laws 2007, LB 463, § 1319.
- 71-1327 Transferred to section 38-1419.
- 71-1327.01 Transferred to section 38-1420.
- 71-1328 Repealed. Laws 1993, LB 187, § 39.
- 71-1329 Repealed. Laws 2007, LB 463, § 1319.

- 71-1330 Repealed. Laws 1993, LB 187, § 39.
- 71-1331 Transferred to section 38-1423.
- 71-1332 Repealed. Laws 2007, LB 463, § 1319.
- 71-1333 Transferred to section 38-1424.
- 71-1333.01 Repealed. Laws 2007, LB 463, § 1319.
- 71-1333.02 Repealed. Laws 2007, LB 463, § 1319.
- 71-1333.03 Repealed. Laws 2007, LB 463, § 1319.
- 71-1334 Repealed. Laws 1988, LB 1100, § 185.
- 71-1335 Repealed. Laws 1988, LB 1100, § 185.
- 71-1336 Repealed. Laws 2003, LB 242, § 154.
- 71-1337 Repealed. Laws 1991, LB 10, § 7.
- 71-1338 Repealed. Laws 1991, LB 10, § 7.
- 71-1339 Transferred to section 38-1425.
- 71-1340 Transferred to section 38-1426.
- 71-1341 Transferred to section 38-1427.
- 71-1342 Repealed. Laws 1986, LB 643, § 25.
- 71-1343 Repealed. Laws 1986, LB 643, § 25.
- 71-1344 Repealed. Laws 1986, LB 643, § 25.
- 71-1345 Repealed. Laws 2007, LB 463, § 1319.
- 71-1346 Transferred to section 38-1428.
- 71-1347 Repealed. Laws 2002, LB 1021, § 111.
- 71-1348 Repealed. Laws 1993, LB 187, § 39.
- 71-1349 Repealed. Laws 2002, LB 1021, § 111.
- 71-1350 Repealed. Laws 2002, LB 1021, § 111.
- 71-1351 Repealed. Laws 2002, LB 1021, § 111.
- 71-1352 Repealed. Laws 2002, LB 1021, § 111.
- 71-1353 Repealed. Laws 2002, LB 1021, § 111.
- 71-1354 Repealed. Laws 2007, LB 463, § 1319.

(b) CREMATION OF HUMAN REMAINS ACT

**71-1355 Act, how cited.**

Sections 71-1355 to 71-1385 shall be known and may be cited as the Cremation of Human Remains Act.

**Source:** Laws 2003, LB 95, § 1; Laws 2015, LB146, § 1.

## Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

**71-1356 Terms, defined.**

For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 30-2223 or a person authorized on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, as provided in section 38-1425;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Division of Public Health of the Department of Health and Human Services;

(13) Director means the Director of Public Health of the Division of Public Health;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 38-1411;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the

anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains;

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container;

(20) Veteran means a person who served on active duty as a member of the United States Armed Forces, a member of the Nebraska National Guard, or a member of the United States Reserve Forces, who was discharged or released from such service under conditions other than dishonorable, and who is eligible for burial in a veteran cemetery;

(21) Veteran cemetery means a cemetery under the control of the United States Department of Veterans Affairs National Cemetery Administration or the Nebraska Department of Veterans' Affairs; and

(22) Veterans service organization means an association, corporation, or other entity that is:

(a) A charitable organization that is tax exempt under section 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code of 1986; and

(b) Organized for the benefit of veterans burial and interment and recognized by the Memorial Affairs Division of the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs. The term includes a member or employee of an eligible nonprofit veterans association, corporation, or entity that specifically assists in facilitating the identification, recovery, and interment of the unclaimed cremated remains of veterans.

**Source:** Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186; Laws 2014, LB998, § 15; Laws 2015, LB146, § 2.

**71-1357 Crematory; license required.**

A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act.

**Source:** Laws 2003, LB 95, § 3; Laws 2007, LB463, § 1187.

**71-1358 Crematory; building and location requirements.**

(1) A crematory shall conform to all building codes and environmental regulations.

(2) A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

**Source:** Laws 2003, LB 95, § 4.

**71-1359 License; application; requirements; fee.**

An applicant for an initial or renewal license as a crematory authority shall file a written application with the department. The application shall be accompanied by the license fee required under section 71-1363 and a certificate



confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Cremation of Human Remains Act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

**Source:** Laws 2003, LB 95, § 5.

**71-1360 License; expiration.**

Except as otherwise provided in the Cremation of Human Remains Act, licenses issued pursuant to the act shall expire five years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

**Source:** Laws 2003, LB 95, § 6.

**71-1361 Crematory; change in location, ownership, or name; application; requirements; fee.**

(1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

**Source:** Laws 2003, LB 95, § 7; Laws 2007, LB463, § 1188.

**71-1362 Provisional license.**

A provisional license may be issued to a crematory authority that substantially complies with requirements for licensure under the Cremation of Human Remains Act and rules and regulations adopted and promulgated under the act. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the crematory authority fully complies with the requirements for licensure under the act and rules and regulations.

**Source:** Laws 2003, LB 95, § 8.

**71-1363 Licensure; fees.**

(1) The fee for an initial or renewal license as a crematory authority shall include a fee determined by the department in rules and regulations.

(2) If the license application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall collect the same fee as provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Health and Human Services Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

**Source:** Laws 2003, LB 95, § 9; Laws 2007, LB296, § 470; Laws 2007, LB463, § 1189.

**71-1364 Department; inspection; report; duties; noncompliance; procedure.**

(1) The department may inspect or provide for the inspection of any crematory operated by a crematory authority licensed under the Cremation of Human Remains Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department.

(2) The department shall issue an inspection report and provide a copy of the report to the crematory authority within ten working days after the completion of an inspection. The department shall review any findings of noncompliance contained in such report within twenty working days after such inspection.

(3) If the department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act, the department may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within ten working days, and a notice that the department may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the department may take further action as provided in sections 71-1366 to 71-1369.

**Source:** Laws 2003, LB 95, § 10.

**71-1365 Complaints; department; duties; confidentiality; immunity.**

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation relating to such complaints.

(2) A complaint submitted to the department under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the department relating to such complaint.

**Source:** Laws 2003, LB 95, § 11.

**71-1366 Imminent danger; department; powers.**

(1) If the director determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, he or she may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the department. A hearing shall be held by the department no later than ten days after the date of such order. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

(2) A continuance of the hearing under subsection (1) of this section shall be granted by the department upon written request from the crematory authority. Such continuance shall not exceed thirty days.

(3) A temporary suspension or temporary limitation order by the director under this section shall take effect when served upon the crematory authority and shall not exceed ninety days. If further action is not taken by the department within such period, the temporary suspension or temporary limitation shall expire.

**Source:** Laws 2003, LB 95, § 12.

**71-1367 Deny or refuse to renew license; disciplinary action; grounds.**

The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 71-1368 on any of the following grounds:

(1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;

(2) Conviction of any crime involving moral turpitude;

(3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

(4) Conviction of a violation pursuant to section 71-1371;

(5) Obtaining a license as a crematory authority by false representation or fraud;

(6) Misrepresentation or fraud in the operation of a crematory; or

(7) Failure to allow access by an agent or employee of the Department of Health and Human Services to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

**Source:** Laws 2003, LB 95, § 13; Laws 2007, LB296, § 471.

**71-1368 Disciplinary actions; fine; disposition.**

(1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:

- (a) A fine not to exceed five hundred dollars per violation;
- (b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;
- (c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;
- (d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and
- (e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall remit fines to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2003, LB 95, § 14; Laws 2007, LB296, § 472.

**71-1369 Appeal.**

Any party to a decision of the department under the Cremation of Human Remains Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2003, LB 95, § 15.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1370 License; reinstatement or relicensure.**

(1) If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the department and payment of the applicable fee as provided in section 71-1363.

(2) If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(3) If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in section 71-1363.

(4) If the license of a crematory authority has been suspended, such license may be reinstated by the department prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director shall (a) grant full reinstatement of the license, (b) modify the suspension, or (c) deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases.

(5) If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until five years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such five-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2003, LB 95, § 16.

**71-1371 Nuisance; abatement; acts prohibited; penalty.**

(1) Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.

(2) It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the department or a cremation permit.

(3) Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.

(4) A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

**Source:** Laws 2003, LB 95, § 17.

**71-1372 Injunction; authorized.**

The department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory

without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

**Source:** Laws 2003, LB 95, § 18.

**71-1373 Cremation; right to authorize.**

The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 30-2223.

**Source:** Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190; Laws 2014, LB998, § 16.

**71-1374 Crematory authority; delivery receipt form; duties.**

(1) A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative.

(2) If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to (a) comply with all applicable public health laws, (b) provide for the health and safety of persons employed at such facility, and (c) prevent any unauthorized access to such facility.

(3) A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

(4) If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than twenty-four hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

**Source:** Laws 2003, LB 95, § 20.

**71-1375 Crematory operation; limitations.**

(1) No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

(2) The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

**Source:** Laws 2003, LB 95, § 21.

**71-1376 Crematory authority; operation; requirements.**

(1) A crematory authority shall not accept human remains for cremation without a proper label indicating the name of the deceased and the name and

location of the funeral establishment placed on the exterior of the alternative container or casket.

(2) No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

(3) No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse (a) a noncombustible casket or any other container that is not an alternative container or (b) a casket or container that is not labeled as required under subsection (1) of this section.

(4) An alternative container shall:

- (a) Be composed of readily combustible materials suitable for cremation;
- (b) Be able to be closed to provide for complete encasement of the human remains;
- (c) Be resistant to leakage or spillage;
- (d) Be rigid enough for easy handling; and
- (e) Provide protection for the health and safety of persons handling such container.

**Source:** Laws 2003, LB 95, § 22.

**71-1377 Cremation authorization form; required; contents.**

(1) A crematory authority shall not cremate human remains until it has received:

- (a) A cremation authorization form as provided in subsection (2) of this section;
- (b) A completed and executed permit for transit or cremation as provided by the department or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated; and
- (c) A delivery receipt form.

(2) A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

- (a) The name of the deceased;
- (b) Date and place of death;
- (c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;
- (d) Notification that the death did or did not occur from a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health;
- (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;

(f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;

(g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;

(h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;

(i) The name of the person authorized to claim the cremated remains from the crematory authority; and

(j) The intended disposition of the cremated remains.

(3) A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of the cremation authorization form, permit for transit or cremation as provided by the department or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under the Cremation of Human Remains Act.

**Source:** Laws 2003, LB 95, § 23.

**71-1378 Cremation authorization form; signature.**

(1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

(2) A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

**Source:** Laws 2003, LB 95, § 24.

**71-1379 Potentially hazardous implant or condition; jewelry or other valuables; requirements.**

(1) No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establish-



ment within an embalming preparation room or at a medical facility by appropriate medical personnel.

(2) No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

**Source:** Laws 2003, LB 95, § 25.

**71-1380 Dispute; crematory authority or funeral establishment; powers and duties.**

(1) If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

(2) If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

**Source:** Laws 2003, LB 95, § 26.

**71-1381 Cremated remains; how treated.**

(1) Insofar as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This subsection shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this subsection.

(2) The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any

other object unless specific written authorization to the contrary has been received from the authorizing agent.

(3) If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

(4) If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

**Source:** Laws 2003, LB 95, § 27.

**71-1382 Cremated remains; final disposition.**

(1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2)(a) Cremated remains shall be delivered or released by the crematory authority or funeral establishment to the representative specified by the authorizing agent on the cremation authorization form.

(b) If the crematory authority or funeral establishment has documentation that the cremated remains are those of a veteran or the spouse or dependent of a veteran who did not desire any funeral or burial-related services or ceremonies recognizing his or her service as a veteran and the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition or claimed the remains after such sixty-day period, the crematory authority or funeral establishment may dispose of the remains.

(c) If the crematory authority or funeral establishment (i) has no information whether the cremated remains are those of a veteran or the spouse or dependent of a veteran or (ii) has information that the cremated remains are those of a veteran or the spouse or dependent of a veteran but no information on whether such veteran desired a service recognizing his or her service as a veteran, the crematory authority or funeral establishment may use the process provided in section 71-1382.01 to relinquish control of such cremated remains.

(d) The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her

representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

**Source:** Laws 2003, LB 95, § 28; Laws 2015, LB146, § 3.

**71-1382.01 Cremated remains; veteran or spouse or dependent of veteran; procedures; final disposition; records; immunity.**

(1)(a) If the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of cremated remains or claimed cremated remains for final disposition as provided in section 71-1382, the crematory authority or funeral establishment may provide information regarding the unclaimed remains to the United States Department of Veterans Affairs, the Nebraska Department of Veterans' Affairs, or a veterans service organization and request that the department or the veterans service organization working with the department:

- (i) Determine if, based on the information received, the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran; and
- (ii) Verify if the decedent is eligible for burial in a veteran cemetery.

(b) The information provided to the department may include a copy of the person's death certificate, the person's name, date of birth, place of birth, date of death, marriage certificate, social security number, military service number, branch of service, or military rank on date of death, or the Department of Defense Form 214, also known as the DD Form 214, or its successor form or record.

(c) The information submitted by the crematory authority or funeral establishment to the Nebraska Department of Veterans' Affairs shall not be considered a public record for purposes of sections 84-712 to 84-712.09.

(2) If the crematory authority or funeral establishment receives notification of a determination by the United States Department of Veterans Affairs or the Nebraska Department of Veterans' Affairs that the unclaimed cremated remains are those of a veteran or the spouse or dependent of a veteran and such person is eligible for burial in a veteran cemetery, then the crematory authority or funeral establishment may relinquish control of such remains to a veterans service organization or a designated member or employee of such organization.

(3)(a) The veterans service organization shall provide disposition of the remains of such veteran or the spouse or dependent of a veteran with a funeral at a veteran cemetery after:

- (i) The veterans service organization has made reasonable efforts to locate the authorizing agent to notify him or her of the veterans service organization's intent to claim the cremated remains for the purpose of providing disposition in accordance with this section;

(ii) The cremated remains of such veteran or the spouse or dependent of a veteran have been in the possession of the veterans service organization for a period of at least one year; and

(iii) No attempt has been made to claim the unclaimed cremated remains by the authorizing agent within such one-year period.

(b) The veterans service organization may provide disposition of cremated remains by placement in a tomb, mausoleum, crypt, or columbarium in a veteran cemetery or by burial in a veteran cemetery but shall not scatter the cremated remains.

(4) If the crematory authority or funeral establishment relinquishes control of the unclaimed cremated remains to a veterans service organization, it shall:

(a) Establish and maintain a record identifying the veterans service organization receiving the remains; and

(b) Retain such record for five years from the date of transfer of the remains to the veterans service organization.

(5) A crematory operator, funeral director, crematory authority, funeral establishment, or veterans service organization shall not be liable for the disposition of cremated remains in accordance with this section unless there is negligence or misconduct.

**Source:** Laws 2015, LB146, § 4; Laws 2018, LB497, § 3.  
Effective date July 19, 2018.

#### **71-1383 Rules and regulations.**

The department may adopt and promulgate rules and regulations to implement the Cremation of Human Remains Act, to include, but not be limited to, rules and regulations establishing conditions under which human remains of persons whose death was caused by a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation, and minimum sanitation standards for all crematories.

**Source:** Laws 2003, LB 95, § 29.

#### **71-1384 Crematory authority; bylaws.**

A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

**Source:** Laws 2003, LB 95, § 30.

#### **71-1385 Act; how construed.**

The Cremation of Human Remains Act shall be construed and interpreted as a comprehensive cremation law, and the provisions of the act shall take precedence over any existing laws or rules and regulations that govern human remains that do not specifically address cremation.

**Source:** Laws 2003, LB 95, § 31.

## **ARTICLE 14**

### **MEDICALLY HANDICAPPED CHILDREN**

#### **Cross References**

Assistance for delinquent, dependent, and medically handicapped children, see Chapter 43, article 5.

Education of children with disabilities, Special Education Act, see section 79-1110.

Section

- 71-1401. Repealed. Laws 2002, LB 93, § 27.
- 71-1402. Repealed. Laws 2002, LB 93, § 27.
- 71-1403. Repealed. Laws 2002, LB 93, § 27.
- 71-1404. Repealed. Laws 2002, LB 93, § 27.
- 71-1405. Medically handicapped child; birth; duty of attendant to report.
- 71-1406. Repealed. Laws 1982, LB 651, § 3.

**71-1401 Repealed. Laws 2002, LB 93, § 27.**

**71-1402 Repealed. Laws 2002, LB 93, § 27.**

**71-1403 Repealed. Laws 2002, LB 93, § 27.**

**71-1404 Repealed. Laws 2002, LB 93, § 27.**

**71-1405 Medically handicapped child; birth; duty of attendant to report.**

(1) Within thirty days after the date of the birth of any child born in this state with visible congenital deformities, the physician, certified nurse midwife, or other person in attendance upon such birth shall prepare and file with the Department of Health and Human Services a statement setting forth such visible congenital deformity. The form of such statement shall be prepared by the department and shall be a part of the birth report furnished by the department.

(2) For purposes of this section, congenital deformities include a cleft lip, cleft palate, hernia, congenital cataract, or disability resulting from congenital or acquired heart disease, or any congenital abnormality or orthopedic condition that can be cured or materially improved. The orthopedic condition or deformity includes any deformity or disease of childhood generally recognized by the medical profession, and it includes deformities resulting from burns.

**Source:** Laws 1937, c. 190, § 5, p. 755; Laws 1941, c. 139, 1, p. 549; C.S.Supp.,1941, § 71-3405; R.S.1943, § 71-1405; Laws 1996, LB 1044, § 563; Laws 1997, LB 307, § 169; Laws 2002, LB 93, § 6; Laws 2005, LB 256, § 35; Laws 2007, LB296, § 473.

Cross References

Birth defects, reports, see section 71-648.

**71-1406 Repealed. Laws 1982, LB 651, § 3.**

**ARTICLE 15**

**HOUSING**

Cross References

- Building Construction Act**, see section 71-6401.
- Community Development Law**, for all cities and villages, see section 18-2101.
- Lead poisoning prevention program**, see section 71-2518.
- Radon detection, measurement, and mitigation**, see section 71-3507.
- Radon Resistant New Construction Act**, see section 76-3501.
- Smoke detectors**, required, see sections 81-5,132 to 81-5,146.

(a) HOUSING COOPERATION LAW

Section

- 71-1501. Repealed. Laws 1999, LB 105, § 103.
- 71-1502. Repealed. Laws 1999, LB 105, § 103.

## PUBLIC HEALTH AND WELFARE

Section	
71-1503.	Repealed. Laws 1999, LB 105, § 103.
71-1504.	Repealed. Laws 1999, LB 105, § 103.
71-1505.	Repealed. Laws 1999, LB 105, § 103.
71-1506.	Repealed. Laws 1999, LB 105, § 103.
71-1507.	Repealed. Laws 1999, LB 105, § 103.
71-1508.	Repealed. Laws 1999, LB 105, § 103.
71-1509.	Repealed. Laws 1999, LB 105, § 103.
71-1510.	Repealed. Laws 1999, LB 105, § 104.
71-1511.	Repealed. Laws 1999, LB 105, § 103.
71-1512.	Repealed. Laws 1999, LB 105, § 103.
71-1513.	Repealed. Laws 1947, c. 179, § 8.
71-1514.	Repealed. Laws 1947, c. 179, § 8.
71-1515.	Repealed. Laws 1947, c. 179, § 8.
71-1516.	Repealed. Laws 1947, c. 179, § 8.
71-1517.	Repealed. Laws 1947, c. 179, § 8.

### (b) NEBRASKA HOUSING AUTHORITIES LAW

71-1518.	Repealed. Laws 1999, LB 105, § 103.
71-1519.	Repealed. Laws 1999, LB 105, § 103.
71-1520.	Repealed. Laws 1999, LB 105, § 103.
71-1521.	Repealed. Laws 1999, LB 105, § 103.
71-1522.	Repealed. Laws 1999, LB 105, § 103.
71-1523.	Repealed. Laws 1999, LB 105, § 103.
71-1524.	Repealed. Laws 1999, LB 105, § 103.
71-1525.	Repealed. Laws 1999, LB 105, § 103.
71-1526.	Repealed. Laws 1999, LB 105, § 103.
71-1527.	Repealed. Laws 1999, LB 105, § 103.
71-1528.	Repealed. Laws 1999, LB 105, § 103.
71-1529.	Repealed. Laws 1999, LB 105, § 103.
71-1530.	Repealed. Laws 1999, LB 105, § 103.
71-1531.	Repealed. Laws 1999, LB 105, § 103.
71-1532.	Repealed. Laws 1999, LB 105, § 103.
71-1533.	Repealed. Laws 1999, LB 105, § 103.
71-1534.	Repealed. Laws 1999, LB 105, § 103.
71-1535.	Repealed. Laws 1999, LB 105, § 103.
71-1536.	Repealed. Laws 1999, LB 105, § 103.
71-1537.	Repealed. Laws 1999, LB 105, § 103.
71-1538.	Repealed. Laws 1999, LB 105, § 103.
71-1539.	Repealed. Laws 1999, LB 105, § 103.
71-1540.	Repealed. Laws 1999, LB 105, § 103.
71-1541.	Repealed. Laws 1999, LB 105, § 103.
71-1542.	Repealed. Laws 1999, LB 105, § 103.
71-1543.	Repealed. Laws 1999, LB 105, § 103.
71-1544.	Repealed. Laws 1999, LB 105, § 103.
71-1545.	Repealed. Laws 1999, LB 105, § 103.
71-1546.	Repealed. Laws 1999, LB 105, § 103.
71-1547.	Repealed. Laws 1999, LB 105, § 103.
71-1548.	Repealed. Laws 1999, LB 105, § 103.
71-1549.	Repealed. Laws 1999, LB 105, § 103.
71-1550.	Repealed. Laws 1999, LB 105, § 103.
71-1551.	Repealed. Laws 1999, LB 105, § 103.
71-1552.	Repealed. Laws 1999, LB 105, § 103.
71-1553.	Repealed. Laws 1999, LB 105, § 103.
71-1554.	Repealed. Laws 1999, LB 105, § 103.

### (c) MODULAR HOUSING UNITS

71-1555.	Act, how cited.
71-1556.	Declaration of purpose.
71-1557.	Terms, defined.

## HOUSING

- Section  
71-1558. Modular housing units; construction of and installation of plumbing, heating, and electrical systems; standards; manner adopted; when applicable.  
71-1559. Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.  
71-1560. Modular housing unit; dealer; prohibited acts; exceptions.  
71-1561. Modular housing units; plumbing, heating, electrical, or construction codes; reciprocity; when; prohibited acts; agreements authorized.  
71-1562. Modular housing unit; local codes or standards; compliance not required; exception; site development, defined.  
71-1563. Modular housing unit; violation; penalty.  
71-1564. Commission; administer act; rules and regulations; powers; enumerated; charge for services.  
71-1565. Repealed. Laws 2002, LB 93, § 27.  
71-1566. Modular housing units; place manufactured, sold, or leased; open to inspection by commission.  
71-1567. Seal; denied or suspended; hearing; appeal.  
71-1568. Repealed. Laws 2001, LB 247, § 3.  
71-1568.01. Existing rules, regulations, orders, suits, and proceedings; effect of transfer.

### (d) PLUMBING

- 71-1569. Scald prevention device; required; when.  
71-1570. Scald prevention device; inspection.  
71-1571. Scald prevention device; violation; penalty.

### (e) NEBRASKA HOUSING AGENCY ACT

- 71-1572. Act, how cited.  
71-1573. Legislative findings.  
71-1574. Act; purposes.  
71-1575. Terms, defined.  
71-1576. Authority established under prior law; existence and actions; how treated.  
71-1577. Local housing agency; created; when.  
71-1578. Local housing agency; resolution or ordinance; effect.  
71-1579. Local housing agency; name.  
71-1580. Local housing agency; evidence of establishment.  
71-1581. Regional housing agency; resolution or ordinance to establish.  
71-1582. Regional housing agency; resolution or ordinance; effect.  
71-1583. Regional housing agency; name.  
71-1584. Regional housing agency; evidence of establishment.  
71-1585. Regional housing agency; additional members; procedure.  
71-1586. Regional housing agency; withdrawal; conditions; effect.  
71-1587. Regional housing agency; become local housing agency or dissolve; when.  
71-1588. Area of operation; effect on jurisdiction.  
71-1589. Debts and liability; responsibility.  
71-1590. Taxation of property; Indian housing authorities; payments in lieu of taxes.  
71-1591. Property; exempt from judicial process.  
71-1592. Agency representatives; exempt from licensing requirements; when.  
71-1593. Applicability of Administrative Procedure Act and procurement, operation, and disposition of property provisions.  
71-1594. Local housing agency; commissioners; appointment.  
71-1595. Commissioners; powers; quorum; executive committee.  
71-1596. Commissioners; appointment; procedure.  
71-1597. Regional housing agency; commissioners; appointment.  
71-1598. Commissioners; terms.  
71-1599. Commissioners; vacancies.  
71-15,100. Certificate of appointment or reappointment.  
71-15,101. Commissioner; qualifications; requirements.  
71-15,102. City of the metropolitan class; commissioner; requirements.  
71-15,103. Commissioner; city representative; required; when.

## PUBLIC HEALTH AND WELFARE

- Section
- 71-15,104. Resident commissioner; selection; procedure.
  - 71-15,105. Commissioner; removal; procedure.
  - 71-15,106. Officers; executive director; employees.
  - 71-15,107. Commissioner; expenses.
  - 71-15,108. Local housing agency; dissolution; conditions.
  - 71-15,109. Local housing agency; dissolution; transfer of rights, property, and liability.
  - 71-15,110. Local housing agency; dissolution; effect on area of operation.
  - 71-15,111. Regional housing agency; dissolution; procedure.
  - 71-15,112. Local housing agency; general powers.
  - 71-15,113. Local housing agency; powers enumerated.
  - 71-15,114. Housing agency; borrow money and issue bonds; liability.
  - 71-15,115. Housing agency; obligations; issuance and sale.
  - 71-15,116. Obligations; validity and enforceability.
  - 71-15,117. Issuance of obligations or incurring debt; housing agency; powers.
  - 71-15,118. Obligee; rights.
  - 71-15,119. Obligee; powers conferred.
  - 71-15,120. Investments in obligations authorized.
  - 71-15,121. Tax status of bonds and other obligations.
  - 71-15,122. Revenue; how treated.
  - 71-15,123. Establishment of rental rates.
  - 71-15,124. Mixed-income developments; restrictions; requirements.
  - 71-15,125. Income, surplus, and payments; use.
  - 71-15,126. Policies and procedures; standards.
  - 71-15,127. Discretionary powers; how construed.
  - 71-15,128. Noncontrolled affiliates; treatment.
  - 71-15,129. Financing; limitations.
  - 71-15,130. Financial affairs; how conducted.
  - 71-15,131. Special limited fund; authorized; restrictions on use.
  - 71-15,132. Dwelling units; occupancy eligibility.
  - 71-15,133. Plan for selection of applicants.
  - 71-15,134. Discrimination prohibited.
  - 71-15,135. Current occupants; how treated.
  - 71-15,136. Lease; terms and conditions.
  - 71-15,137. Change in household; effect.
  - 71-15,138. Termination of tenancy; conditions.
  - 71-15,139. Termination of tenancy; procedure; recovery of possession of premises; when.
  - 71-15,140. Personal property; rules and regulations.
  - 71-15,141. Report; false report; penalty; audits.
  - 71-15,142. Plan for location and boundaries; approval required.
  - 71-15,143. Local housing agency representative; liability.
  - 71-15,144. Housing agency representative; indemnification.
  - 71-15,145. Effect of local planning, zoning, sanitary, and building laws.
  - 71-15,146. Records; exempt from disclosure.
  - 71-15,147. Records; disclosure permitted; when.
  - 71-15,148. Individual files; examination permitted.
  - 71-15,149. Conflict of interest; terms, defined.
  - 71-15,150. Conflict of interest; prohibited acts.
  - 71-15,151. Conflict of interest; disclosure required; when.
  - 71-15,152. Housing agency official; recusal; when.
  - 71-15,153. Housing agency official; gifts; prohibited acts.
  - 71-15,154. Housing agency official; improper use of information.
  - 71-15,155. Misconduct in office.
  - 71-15,156. Conflict of interest; rules authorized.
  - 71-15,157. Conflict of interest; sections; how construed.
  - 71-15,158. Property and personnel; policies, rules, and procedures; bidding requirements.
  - 71-15,159. Local housing agency; joint exercise of powers authorized.
  - 71-15,160. Local housing agency; joint or cooperative powers enumerated.
  - 71-15,161. Public agency; powers.



Section	
71-15,162.	State and public agencies; powers.
71-15,163.	Screening of applicants; powers of public agencies.
71-15,164.	Enforcement of rights; remedies.
71-15,165.	Claims and actions; restrictions.
71-15,166.	Act; how construed.
71-15,167.	Conflicting provisions; how construed.
71-15,168.	Tort claims; other claims; procedure.

## (a) HOUSING COOPERATION LAW

**71-1501 Repealed. Laws 1999, LB 105, § 103.**

**71-1502 Repealed. Laws 1999, LB 105, § 103.**

**71-1503 Repealed. Laws 1999, LB 105, § 103.**

**71-1504 Repealed. Laws 1999, LB 105, § 103.**

**71-1505 Repealed. Laws 1999, LB 105, § 103.**

**71-1506 Repealed. Laws 1999, LB 105, § 103.**

**71-1507 Repealed. Laws 1999, LB 105, § 103.**

**71-1508 Repealed. Laws 1999, LB 105, § 103.**

**71-1509 Repealed. Laws 1999, LB 105, § 103.**

**71-1510 Repealed. Laws 1999, LB 105, § 104.**

**71-1511 Repealed. Laws 1999, LB 105, § 103.**

**71-1512 Repealed. Laws 1999, LB 105, § 103.**

**71-1513 Repealed. Laws 1947, c. 179, § 8.**

**71-1514 Repealed. Laws 1947, c. 179, § 8.**

**71-1515 Repealed. Laws 1947, c. 179, § 8.**

**71-1516 Repealed. Laws 1947, c. 179, § 8.**

**71-1517 Repealed. Laws 1947, c. 179, § 8.**

## (b) NEBRASKA HOUSING AUTHORITIES LAW

**71-1518 Repealed. Laws 1999, LB 105, § 103.**

**71-1519 Repealed. Laws 1999, LB 105, § 103.**

**71-1520 Repealed. Laws 1999, LB 105, § 103.**

**71-1521 Repealed. Laws 1999, LB 105, § 103.**

**71-1522 Repealed. Laws 1999, LB 105, § 103.**

**71-1523 Repealed. Laws 1999, LB 105, § 103.**

**71-1524 Repealed. Laws 1999, LB 105, § 103.**

- 71-1525 Repealed. Laws 1999, LB 105, § 103.
- 71-1526 Repealed. Laws 1999, LB 105, § 103.
- 71-1527 Repealed. Laws 1999, LB 105, § 103.
- 71-1528 Repealed. Laws 1999, LB 105, § 103.
- 71-1529 Repealed. Laws 1999, LB 105, § 103.
- 71-1530 Repealed. Laws 1999, LB 105, § 103.
- 71-1531 Repealed. Laws 1999, LB 105, § 103.
- 71-1532 Repealed. Laws 1999, LB 105, § 103.
- 71-1533 Repealed. Laws 1999, LB 105, § 103.
- 71-1534 Repealed. Laws 1999, LB 105, § 103.
- 71-1535 Repealed. Laws 1999, LB 105, § 103.
- 71-1536 Repealed. Laws 1999, LB 105, § 103.
- 71-1537 Repealed. Laws 1999, LB 105, § 103.
- 71-1538 Repealed. Laws 1999, LB 105, § 103.
- 71-1539 Repealed. Laws 1999, LB 105, § 103.
- 71-1540 Repealed. Laws 1999, LB 105, § 103.
- 71-1541 Repealed. Laws 1999, LB 105, § 103.
- 71-1542 Repealed. Laws 1999, LB 105, § 103.
- 71-1543 Repealed. Laws 1999, LB 105, § 103.
- 71-1544 Repealed. Laws 1999, LB 105, § 103.
- 71-1545 Repealed. Laws 1999, LB 105, § 103.
- 71-1546 Repealed. Laws 1999, LB 105, § 103.
- 71-1547 Repealed. Laws 1999, LB 105, § 103.
- 71-1548 Repealed. Laws 1999, LB 105, § 103.
- 71-1549 Repealed. Laws 1999, LB 105, § 103.
- 71-1550 Repealed. Laws 1999, LB 105, § 103.
- 71-1551 Repealed. Laws 1999, LB 105, § 103.
- 71-1552 Repealed. Laws 1999, LB 105, § 103.
- 71-1553 Repealed. Laws 1999, LB 105, § 103.
- 71-1554 Repealed. Laws 1999, LB 105, § 103.

## (c) MODULAR HOUSING UNITS

**71-1555 Act, how cited.**

Sections 71-1555 to 71-1568.01 shall be known and may be cited as the Nebraska Uniform Standards for Modular Housing Units Act.

**Source:** Laws 1976, LB 248, § 1; Laws 1984, LB 822, § 1; Laws 1998, LB 1073, § 90.

**71-1556 Declaration of purpose.**

The Legislature finds and declares that uniformity in the manner of construction, assembly, and use of modular housing units and that of their systems, components, and appliances, including their plumbing, heating, and electrical systems, is extremely desirable in order that owners may not be burdened with differing requirements and in order to promote construction which will foster the health and safety of the numerous persons living in modular housing units.

**Source:** Laws 1976, LB 248, § 2; Laws 1984, LB 822, § 2.

**71-1557 Terms, defined.**

As used in the Nebraska Uniform Standards for Modular Housing Units Act, unless the context otherwise requires:

(1) Modular housing unit means any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units, containing facilities for no more than one family, not fabricated on the final site for the dwelling unit, which units are movable or portable until placed on a permanent foundation and connected to utilities. Modular housing units shall be taxed as real estate;

(2) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the modular housing unit as determined by the commission to evidence compliance with state standards;

(3) Dealer means any person other than a manufacturer who sells, offers to sell, distributes, or leases modular housing units primarily to persons who in good faith purchase or lease a modular housing unit for purposes other than resale;

(4) Manufacturer means any person who manufactures or produces modular housing units;

(5) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing modular housing units; and

(6) Commission means the Public Service Commission.

**Source:** Laws 1976, LB 248, § 3; Laws 1984, LB 822, § 3; Laws 1985, LB 313, § 4; Laws 1993, LB 121, § 424; Laws 1994, LB 511, § 6; Laws 1996, LB 1044, § 564; Laws 1998, LB 1073, § 91; Laws 2008, LB797, § 6.

**71-1558 Modular housing units; construction of and installation of plumbing, heating, and electrical systems; standards; manner adopted; when applicable.**

(1) All construction of and all plumbing, heating, and electrical systems installed in modular housing units manufactured, sold, offered for sale, or leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the standards of the state agency responsible for regulation of modular housing units as such standards existed on the date of manufacture.

(2) All construction of and all plumbing, heating, and electrical systems installed in modular housing units manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall be at least equal to the standards adopted and approved by the commission pursuant to its rules and regulations as such standards existed on the date of manufacture. The standards shall (a) protect the health and safety of persons living in modular housing units, (b) assure reciprocity with other states that have adopted standards which protect the health and safety of persons living in modular housing units the purpose of which is to make uniform the law of those states which adopt them, (c) allow variations from such uniform standards as will reduce unnecessary costs of construction or increase safety, durability, or efficiency, including energy efficiency, of the modular housing unit without jeopardizing such reciprocity, (d) assure changes in those uniform standards which reflect new technology making possible greater safety, efficiency, including energy efficiency, economy, or durability than earlier standards, and (e) allow for reduced energy and snow live load requirements for those modular housing units destined for out-of-state siting if the receiving jurisdiction has such reduced requirements. The commission shall adopt as standards relating to electrical systems in modular housing units those applicable standards adopted and amended by the State Electrical Board under section 81-2104.

(3) Whenever practical, the standards shall be stated in terms of required levels of performance so as to facilitate the prompt acceptance of new building materials and methods. If generally recognized standards of performance are not available, the standards shall provide for acceptance of materials and methods whose performance has been found by the commission on the basis of reliable test and evaluation data presented by the proponent to be substantially equal to those specified.

**Source:** Laws 1976, LB 248, § 4; Laws 1984, LB 822, § 4; Laws 1992, LB 1019, § 65; Laws 1998, LB 1073, § 92; Laws 2008, LB797, § 7.

**71-1559 Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.**

(1) Every modular housing unit, except those constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of modular housing units as such requirements existed on the date of manufacture.

(2) Every modular housing unit, except those constructed or manufactured by any school district or community college area as part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a

seal issued by the commission certifying that the construction and the structural, plumbing, heating, and electrical systems of such modular housing unit have been installed in compliance with its standards applicable at the time of manufacture. Each manufacturer of such modular housing units, except those constructed or manufactured by such school district or community college area, shall submit its plans to the commission for the purposes of inspection. The commission shall establish a compliance assurance program consisting of an application form and a compliance assurance manual. Such manual shall identify and list all procedures which the manufacturer and the inspection agency propose to implement to assure that the finished modular housing unit conforms to the approved building system and the applicable codes adopted by the commission. The compliance assurance program requirements shall apply to all inspection agencies, whether commission or authorized third party, and shall define duties and responsibilities in the process of inspecting, monitoring, and issuing seals for modular housing units. The commission shall issue the seal only after ascertaining that the manufacturer is in full compliance with the compliance assurance program through inspections at the plant by the commission or authorized third-party inspection agency. Such inspections shall be of an unannounced frequency such that the required level of code compliance performance is implemented and maintained throughout all areas of plant and site operations that affect regulatory aspects of the construction. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of violation of the conditions of issuance.

(3) Modular housing units constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area shall be inspected by the local inspection authority or, upon request of the district or area, by the commission. If the commission inspects a unit and finds that it is in compliance, the commission shall issue a seal certifying that the construction and the structural, plumbing, heating, and electrical systems of such unit have been installed in compliance with the standards applicable at the time of manufacture.

(4) The commission shall charge a seal fee of not less than one hundred and not more than one thousand dollars per modular housing unit, as determined annually by the commission after published notice and a hearing, for seals issued by the commission under subsection (2) or (3) of this section.

(5) Inspection fees shall be paid for all inspections by the commission of manufacturing plants located outside of the State of Nebraska. Such fees shall consist of a reimbursement by the manufacturer of actual travel and inspection expenses only and shall be paid prior to any issuance of seals.

(6) All fees collected under the Nebraska Uniform Standards for Modular Housing Units Act shall be remitted to the State Treasurer for credit to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

**Source:** Laws 1976, LB 248, § 5; Laws 1978, LB 812, § 1; Laws 1981, LB 218, § 1; Laws 1983, LB 617, § 20; Laws 1984, LB 822, § 5; Laws 1991, LB 703, § 34; Laws 1992, LB 1019, § 66; Laws 1996, LB 1044, § 565; Laws 1998, LB 1073, § 93; Laws 2001, LB 247, § 1; Laws 2003, LB 241, § 1; Laws 2008, LB797, § 8; Laws 2010, LB849, § 24.

**71-1560 Modular housing unit; dealer; prohibited acts; exceptions.**

Except as provided in section 71-1561, no dealer shall sell, offer for sale, or lease in this state any new modular housing unit manufactured (1) more than six months after July 10, 1976, and before May 1, 1998, unless such modular housing unit meets or exceeds the standards established by the state agency responsible for regulation of modular housing units as such standards existed on the date of manufacture with respect to construction thereof and the installation of plumbing, heating, and electrical systems or (2) on or after May 1, 1998, unless such modular housing unit meets or exceeds the standards established by the commission with respect to construction thereof and the installation of plumbing, heating, and electrical systems.

**Source:** Laws 1976, LB 248, § 6; Laws 1984, LB 822, § 6; Laws 1998, LB 1073, § 94.

**71-1561 Modular housing units; plumbing, heating, electrical, or construction codes; reciprocity; when; prohibited acts; agreements authorized.**

If any other state has plumbing, heating, electrical, or construction codes for modular housing units at least equal to those established by the commission pursuant to the Nebraska Uniform Standards for Modular Housing Units Act, the commission, upon determining that such standards are being enforced by such other state, shall place such other state on a reciprocity list which shall be available to any interested person. Any modular housing unit which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A modular housing unit manufactured more than six months after July 10, 1976, which does not bear the seal issued by this state or by a state which has been placed on the reciprocity list shall not be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor transported or delivered into any other state or jurisdiction.

The commission may enter into agreements with the federal government, any federal agency, or any other state, state agency, interstate agency, compact, or local jurisdiction to perform inspections pursuant to the federal government's or the agency's, state's, compact's, or jurisdiction's standards relating to modular housing units.

**Source:** Laws 1976, LB 248, § 7; Laws 1984, LB 822, § 7; Laws 1992, LB 1019, § 67; Laws 1998, LB 1073, § 95.

**71-1562 Modular housing unit; local codes or standards; compliance not required; exception; site development, defined.**

No agency or political subdivision of the state or a municipality shall require compliance with local codes or standards for the construction of or the installation of structural, plumbing, heating, or electrical systems in a modular housing unit which are different from those established by the commission pursuant to the Nebraska Uniform Standards for Modular Housing Units Act. An agency or political subdivision of this state or a municipality may prescribe reasonable and necessary requirements of the site development for modular housing units in accordance with local standards. Site development is defined for the purposes of such act as those local development requirements including, but not limited to, foundations, site utility requirements and their connections

to the modular housing units, zoning and subdivision regulations, and fire control provisions.

**Source:** Laws 1976, LB 248, § 8; Laws 1984, LB 822, § 8; Laws 1998, LB 1073, § 96.

**71-1563 Modular housing unit; violation; penalty.**

(1) Any person who manufactures, sells, offers for sale, or leases in this state any modular housing unit which does not bear the seal required by the provisions of the Nebraska Uniform Standards for Modular Housing Units Act shall be guilty of a Class IV misdemeanor.

(2) The commission may, in accordance with the laws governing injunctions and other processes, maintain an action in the name of the state against any person who manufactures, sells, offers for sale, or leases in this state any modular housing unit which does not bear the seal required by the provisions of such act.

(3) The commission may administratively fine pursuant to section 75-156 any person who violates the act or any rule or regulation adopted and promulgated under the act.

**Source:** Laws 1976, LB 248, § 9; Laws 1977, LB 41, § 60; Laws 1984, LB 822, § 9; Laws 1998, LB 1073, § 97; Laws 2008, LB797, § 9.

**71-1564 Commission; administer act; rules and regulations; powers; enumerated; charge for services.**

(1) The commission is hereby charged with the administration of the provisions of the Nebraska Uniform Standards for Modular Housing Units Act. The commission may adopt, amend, alter, or repeal general rules and regulations of procedure for carrying out and administering the provisions of such act in regard to (a) the issuance of seals, (b) the submission of plans and specifications of modular housing units, (c) the obtaining of statistical data respecting the manufacture and sale of modular housing units, and (d) the prescribing of means, methods, and practices to make effective such provisions. In adopting such rules and regulations, the commission may require that plans and specifications of modular housing units submitted to the commission be prepared and submitted only by a Nebraska architect or professional engineer.

(2) A person intending to manufacture, sell, offer for sale, or lease a modular housing unit in the State of Nebraska shall submit plans, specifications, and a compliance assurance program in accordance with the act and shall be charged for engineering services of the commission provided for performing the review of such initial submittal at a rate of not less than fifteen dollars per hour and not more than sixty dollars per hour based upon sixty hours of review time as determined annually by the commission after published notice and a hearing.

**Source:** Laws 1976, LB 248, § 10; Laws 1984, LB 822, § 10; Laws 1992, LB 1019, § 68; Laws 1997, LB 622, § 100; Laws 1998, LB 1073, § 98; Laws 2008, LB797, § 10.

**71-1565 Repealed. Laws 2002, LB 93, § 27.**

**71-1566 Modular housing units; place manufactured, sold, or leased; open to inspection by commission.**

The commission through its authorized representatives may enter any place or establishment where modular housing units are manufactured, sold, offered for sale, or leased for the purpose of inspecting such modular housing units or parts thereof in order to ascertain whether the requirements of the Nebraska Uniform Standards for Modular Housing Units Act and the rules, regulations, and standards adopted by the commission have been complied with. If the commission appoints qualified nongovernmental inspectors or inspection agencies as its authorized representatives to carry out such inspections, the commission shall at all times exercise supervisory control over such inspectors or agencies to insure effective and uniform enforcement of its standards. No person may interfere with, obstruct, or hinder an authorized representative of the commission in the performance of such an inspection.

**Source:** Laws 1976, LB 248, § 12; Laws 1984, LB 822, § 12; Laws 1998, LB 1073, § 100.

**71-1567 Seal; denied or suspended; hearing; appeal.**

(1) The commission shall refuse to issue a seal to a manufacturer for any modular housing unit not found to be in compliance with its standards governing the construction of or the structural, plumbing, heating, or electrical systems for modular housing units or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal may be appealed, and the appeal shall be in accordance with section 75-136.

(2) The issuance of seals may be suspended as to any manufacturer who is convicted of violating section 71-1563 or as to any manufacturer who violates any other provision of the Nebraska Uniform Standards for Modular Housing Units Act or any rule, regulation, commission order, or standard adopted pursuant thereto, and issuance of the seals shall not be resumed until such manufacturer submits sufficient proof that the conditions which caused the violation have been remedied. Any such manufacturer may request a hearing before the commission on the issue of such suspension. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension may be appealed, and the appeal shall be in accordance with section 75-136.

**Source:** Laws 1976, LB 248, § 13; Laws 1984, LB 822, § 13; Laws 1988, LB 352, § 121; Laws 1998, LB 1073, § 101; Laws 2008, LB797, § 11; Laws 2013, LB545, § 2.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1568 Repealed. Laws 2001, LB 247, § 3.**

**71-1568.01 Existing rules, regulations, orders, suits, and proceedings; effect of transfer.**

All rules, regulations, and orders of the Department of Health and Human Services Regulation and Licensure or its predecessor agency adopted prior to May 1, 1998, in connection with the powers, duties, and functions transferred to the Public Service Commission under the Nebraska Uniform Standards for



Modular Housing Units Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to May 1, 1998, or which could have been commenced prior to that date, by or against such department or agency, or the director or employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from such department or agency to the commission.

On and after May 1, 1998, unless otherwise specified, whenever any provision of law refers to such department or agency in connection with duties and functions transferred to the commission, the law shall be construed as referring to the commission.

Any costs incurred by the department and associated with the transfer of powers, duties, and functions to the commission under the act shall be borne by the commission.

**Source:** Laws 1998, LB 1073, § 102.

#### (d) PLUMBING

##### **71-1569 Scald prevention device; required; when.**

(1) Except as provided in subsection (2) of this section, all bathtubs and showers installed in buildings which contain more than one dwelling unit after August 30, 1987, shall be equipped with either a pressure balancing or thermostatic-mixing scald prevention device which is designed and installed to prevent (a) sudden unanticipated changes in the temperature of the water delivered and (b) the temperature of the water delivered from exceeding one hundred fifteen degrees Fahrenheit.

(2) Subsection (1) of this section shall not apply to showers or bathtubs installed in modular housing units as defined in section 71-1557, manufactured homes as defined in section 71-4603, or recreational vehicles as defined in section 71-4603.

**Source:** Laws 1987, LB 264, § 1.

##### **71-1570 Scald prevention device; inspection.**

Persons employed by political subdivisions to inspect plumbing fixtures shall inspect showers and bathtubs for compliance with section 71-1569.

**Source:** Laws 1987, LB 264, § 2.

##### **71-1571 Scald prevention device; violation; penalty.**

Anyone who installs four or more showers or bathtubs, in a single building, in violation of section 71-1569 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1987, LB 264, § 3.

#### (e) NEBRASKA HOUSING AGENCY ACT

##### **71-1572 Act, how cited.**

Sections 71-1572 to 71-15,168 shall be known and may be cited as the Nebraska Housing Agency Act.

**Source:** Laws 1999, LB 105, § 1.

**71-1573 Legislative findings.**

The Legislature declares that:

(1) There exists within this state a shortage of residential housing that is decent, safe, and sanitary, situated in safe, livable neighborhoods, and affordable to persons of low and moderate income;

(2) Many persons and families throughout this state occupy inadequate, overcrowded, unsafe, or unsanitary residential housing because they are unable to locate and secure suitable housing at a price that they can reasonably afford. This circumstance has resulted in undue concentrations of impoverished populations in certain areas, increased rates of crime, deterioration in human health, and other family and social dysfunction, thereby seriously and adversely affecting the public health, safety, and welfare of persons residing in this state;

(3) In addition to the lack of suitable, affordable housing, there persists in numerous areas of this state conditions of economic distress accompanied by physical deterioration of public facilities and commercial and residential infrastructure;

(4) It is the goal and policy of this state that all its residents shall have access to decent, safe, sanitary, and affordable housing in safe and livable neighborhoods and it is the policy of this state to assure the availability, for rental or sale, of decent, safe, and sanitary housing that is affordable to all persons residing in this state;

(5) It is further the goal and policy of this state that, to the maximum extent feasible, persons and families benefiting from activities authorized under the Nebraska Housing Agency Act be encouraged to become economically self-sufficient;

(6) Achieving permanent improvement in the living standards of persons of low and moderate income may require, in addition to providing enhanced housing opportunities, the delivery of social, educational, and other supportive services and the operation of programs to develop self-sufficiency and to provide economic and employment opportunities and other benefits for persons assisted under the act;

(7) Persons of low and moderate income possess inadequate access to sources of equity and financing for the purchase and ownership of housing at rates and upon terms reasonably affordable to such persons;

(8) The adverse conditions described in this section cannot be remedied, nor can the goals and policies of this section be successfully carried out, through the ordinary functioning of private enterprise alone. These objectives may be attainable by diligent efforts of public agencies acting both alone and cooperatively with private sector entities and enterprises. The actions of public agencies so taken are, therefore, not competitive with private enterprise;

(9) The replanning and reconstruction of areas in which housing is unsafe or unsanitary or in which neighborhoods are unlivable; the provision of decent, safe, and sanitary housing that is affordable to persons of low and moderate income, including the development, leasing, or sale thereof; and the provision of supportive services and programs benefiting persons and families receiving housing assistance under the act are public uses and purposes and essential governmental functions for which public funds may be spent and private property acquired. The character of any expenditures of public funds contemplated under the act as necessary and proper public expenditures for essential

government functions is not altered because such expenditures may be made to, or in connection with, the activities of private sector entities or enterprises, whether nonprofit or for-profit in nature;

(10) The amount of funding for decent, safe, and sanitary housing that is affordable to persons of low and moderate income and for associated services to benefit such persons has not kept pace either with the growing demand for such housing and services or with the needs of local housing agencies to operate and maintain their facilities and programs. Since local housing agencies do not possess the power to tax, it is necessary to ensure other adequate funding sources for their activities. Accordingly, this state must provide to its local housing agencies sufficient power to adequately address the housing needs of persons of low and moderate income within this state and to operate related programs with funding derived from public and private sources as well as the federal government. In this regard it is further found that:

(a) Carrying out the purposes of the act may necessitate agreements with private sector entities and with other public entities. It is the policy of this state to encourage such public-private and intergovernmental cooperation;

(b) The purposes of the act will best be carried out by affording to local housing agencies of this state the maximum amount of flexibility, responsibility, and discretion. Therefore, in carrying out the purposes of the act, such agencies shall be presumed to possess necessary powers and legal prerogatives which will enable them to carry out their purposes;

(c) Adequately serving persons who are eligible for assistance under the act may be possible only if the income of local housing agencies is supplemented by income derived from providing housing to persons who are not eligible for such assistance; and

(d) Improved sources of financing must be made available to local housing agencies and by local housing agencies to the private sector of the economy to enable such agencies and private enterprise to increase the production of new housing and to conserve and preserve the supply of existing housing that is affordable for rental or sale to persons of low and moderate income;

(11) This state and its public agencies should be involved to a significant degree in the provision of decent, safe, sanitary, and affordable housing within safe, livable neighborhoods for its residents. It is the policy of this state to cooperate and to encourage all of its public agencies to cooperate with local housing agencies in order to facilitate, to the maximum extent feasible, the planning, development, and operation of decent, safe, and sanitary housing that is affordable to persons of low and moderate income;

(12) Adverse social conditions and crime problems, including drug-related crime problems, exist within this state and in some local housing agency developments. All reasonable and practicable steps should be taken to mitigate adverse social conditions and to lessen the effects of drug and crime problems on residents of local housing agency developments. Local housing agencies should possess reasonable power and authority to establish and implement policies and to take all reasonable actions appropriate to mitigate adverse social conditions and to eliminate drug and crime problems in their developments; and

(13) While it is the goal of this state to provide access to decent, safe, sanitary, and affordable housing to all of its residents, persons accepting assistance under the act shall, by such acceptance thereof, recognize their

responsibilities to the local housing agencies providing such assistance and to other persons living in their vicinity. Accordingly, local housing agencies should be permitted to impose and enforce occupancy standards and requirements that are typical of those applicable in standard rental agreements.

**Source:** Laws 1999, LB 105, § 2.

**71-1574 Act; purposes.**

The purposes of the Nebraska Housing Agency Act are:

(1) To remedy the shortage of decent, safe, and sanitary housing affordable to persons of low and moderate income, to provide opportunities to secure such housing to all such persons, to preserve existing supplies of such housing, and to create, administer, and operate programs to increase and maintain access to decent, safe, and sanitary rental housing and home ownership upon terms affordable to such persons;

(2) To encourage the development, redevelopment, rehabilitation, and preservation of safe, livable neighborhoods containing housing that is affordable to persons of low and moderate income, including mixed-income developments, and to reduce where feasible high residential concentrations of impoverished persons;

(3) In connection with the provision of affordable housing and related activities authorized under the act, to eliminate or ameliorate conditions of blight and physical deterioration in public facilities and the residential infrastructure;

(4) To provide housing, rental, and other assistance to persons of low and moderate income and assistance to properties and entities in accordance with the provisions of the act and, subject to standards and procedures adopted by the local housing agency, to authorize the provision by local housing agencies of supportive services and programs of every kind and description to advance the social, educational, and economic well-being and the economic and social self-sufficiency of persons receiving housing assistance under the act so as to create wholesome living environments, eliminate long-term poverty, encourage gainful employment, develop social and economic self-sufficiency, including living independently of housing assistance, and enhance personal responsibility on the part of such persons;

(5) To increase intergovernmental cooperation and the use of consortia and intergovernmental partnerships for the development of affordable housing and suitable neighborhoods;

(6) To encourage the use of entrepreneurial methods and approaches and to stimulate and increase private sector initiatives and joint public-private sector initiatives by local housing agencies in carrying out the purposes and provisions of the act;

(7) To increase the availability, from both public and private sector sources, of financing for the purchase of dwellings and the financing for home improvements, repairs, and rehabilitation at rates and upon terms that are affordable to persons of low or moderate income and to increase the availability of sources of equity and other financing for the development and operation by local housing agencies and private sector entities of decent, safe, and sanitary rental housing that is affordable to persons of low and moderate income; and

(8) In carrying out the purposes described in this section, to vest in local housing agencies reasonable responsibility, authority, and discretion.

**Source:** Laws 1999, LB 105, § 3.

**71-1575 Terms, defined.**

For purposes of the Nebraska Housing Agency Act:

(1) Affiliate means any corporation, entity, partnership, venture, syndicate, or arrangement in which a local housing agency participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates;

(2) Affordable housing means dwelling units that may be rented or purchased, as the case may be, by persons of eligible income and qualifying tenants, with or without government assistance;

(3) Agreement means a contract or other legal relations with another party, whether public or private;

(4) Area of operation means the geographical area within which a local housing agency may own or operate housing developments as described in section 71-1588;

(5) City means an incorporated city or village;

(6) Commissioner means a person serving on the governing board of a local housing agency, including any person identified under prior law as a member of a housing authority;

(7) Community facilities means real and personal property suitable for recreational, educational, health, or welfare purposes, including, but not limited to, buildings, equipment, and parks and other spaces or structures;

(8) Controlled affiliate means any affiliate of a local housing agency (a) in which commissioners, officers, employees, and agents of such agency constitute a majority of the governing body of such entity or (b) in which such agency holds a majority of the ownership interests;

(9) Development or housing development means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description which a local housing agency may own or operate or in which it may hold an interest under the provisions of the act; all land upon which such dwellings, appurtenances, and facilities are situated; all work and activities undertaken by a local housing agency or others relating to the creation of such property and all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments; and all rights and obligations arising thereunder establishing or confirming ownership, title, or right of use or possession in or to any such property by a local housing agency;

(10) Establishing a housing agency means taking all actions required under sections 71-1576 to 71-1587 to be taken by the governing body of a city or county or, in the case of a regional housing agency, by the governing bodies of all political subdivisions participating therein, for a housing agency to conduct business and to exercise its powers. In the case of a housing agency or housing authority existing on January 1, 2000, established means that such agency has been authorized to conduct business and exercise its powers in accordance with prior law;

(11) Family means a single person or a number of persons that may, but need not, include children, that a local housing agency accepts for occupancy of a dwelling, or to which such agency offers or provides other assistance, as particularly defined in the eligibility and occupancy standards adopted by the agency;

(12) Guest means any person, not a resident of such development, who is present within a development, or any person, not a resident in such dwelling, who is present within a dwelling in a development, as an invitee of or otherwise with the acquiescence or consent of a resident of such development or dwelling, as the case may be;

(13) Hold an interest means ownership, control of, or participation in an arrangement with respect to a development by a local housing agency or any affiliate thereof;

(14) Household means a family as defined in subdivision (11) of this section;

(15) Housing agency or agency means and includes both a local housing agency established pursuant to sections 71-1576 to 71-1580 and a regional housing agency established pursuant to sections 71-1581 to 71-1587. Reference in any prior or other law to housing authority is deemed to refer to housing agency. Wherever the context requires or permits, housing agency or agency includes controlled affiliates of a housing agency;

(16) Local housing agency or agency means a public body, corporate and politic, previously established or to be established by a city or a county pursuant to the authority provided in the act, exercising necessary and essential governmental functions for the purposes stated in the act in matters of state-wide concern, although its operations are local in nature. A local housing agency shall be a political subdivision of this state, independent from the city or county which established or establishes it or which may appoint some or all of its commissioners. Any reference in the act to a local housing agency includes a housing agency or a regional housing agency, unless the context clearly otherwise requires. The term local housing agency also includes any housing authority established under prior law;

(17) Mixed-finance development means a development that is financed both by funding derived from the private sector and funding provided by the government that is permitted to be used for the development of affordable housing;

(18) Mixed-income development means a housing development intended to be, and which in fact is, occupied both by persons of eligible income and by other persons, and if such other persons are living in a development constructed or acquired and substantially occupied after January 1, 2000, the incomes of such other persons at initial occupancy shall not exceed one hundred percent of the median income in the county in which the development is located;

(19) Noncontrolled affiliate means an affiliate in which a local housing agency participates that is not a controlled affiliate;

(20) Person includes a family;

(21) Persons of eligible income means:

(a) With respect to state or federally funded activities or developments, individuals or families who meet the applicable income requirements of the state or federal program involved, if any such state or federal income require-

ments are applicable, and, if none are so applicable, then individuals or families who meet the requirements of subdivision (b) of this subdivision; and

(b) With respect to activities and developments other than those to which subdivision (a) of this subdivision is applicable, individuals or families who, in the determination of the local housing agency, lack sufficient income or assets, taking into account all resources available to such individuals or families from whatever source derived or reasonably derivable, to enable them, without undue hardship or governmental financial assistance, to purchase or rent, as the case may be, decent, safe, and sanitary dwellings of adequate size, except that the income of such families shall not exceed eighty percent of the area median income for families of like size;

(22) Public agency means and includes any: (a) County, city, village, or township; school, drainage, tax, improvement, or other district; local housing agency; department, division, or political subdivision of this state or another state; housing agency, housing finance agency, or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state; (b) board, agency, commission, division, or other instrumentality of a city or county; and (c) board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof;

(23) Qualifying tenants means persons described in subdivision (21)(b) of this section and individuals and families whose income does not exceed one hundred twenty-five percent of the maximum income standard applicable under subdivision (21)(b) of this section;

(24) Regional housing agency means a public body, corporate and politic, and a governmental subdivision of this state, formed by two or more cities, two or more counties, or a combination of cities and counties, pursuant to the authority provided in sections 71-1581 to 71-1587, exercising necessary and essential governmental functions for the purposes stated in the act in matters of statewide concern, although its operations are local or regional in nature. It is a political subdivision of this state, independent from political subdivisions of this state which established it or which may appoint some or all of its commissioners;

(25) Representative means a commissioner, officer, employee, or agent of a local housing agency; and

(26) Resident means a person residing in a development of a housing agency pursuant to an agreement with such agency.

**Source:** Laws 1999, LB 105, § 4.

**71-1576 Authority established under prior law; existence and actions; how treated.**

Any local housing authority established under any prior Nebraska law relating to housing authorities and in existence on January 1, 2000, shall have continued existence as a housing agency under the Nebraska Housing Agency Act and shall thereafter conduct its operations consistent with the act. All property, rights in land, buildings, records, and equipment and any funds, money, revenue, receipts, or assets of an authority shall belong to the agency as successor. All obligations, debts, commitments, and liabilities of an authority shall become obligations, debts, commitments, and liabilities of the successor

agency. Any resolution by an authority and any action taken by the authority prior to January 1, 2000, with regard to any project or program which is to be completed within or to be conducted for a twelve-month period following January 1, 2000, and which resolution or action is lawful under Nebraska law as it exists prior to January 1, 2000, shall be a lawful resolution or action of the successor agency and binding upon such successor agency and enforceable by or against such agency notwithstanding that such resolution or action is inconsistent with, not authorized, or prohibited under the provisions of the act. All commissioners of such agency and all officers, legal counsel, technical experts, directors, and other appointees or employees of such agency holding office or employment by virtue of any such prior law on January 1, 2000, shall be deemed to have been appointed or employed under the act.

**Source:** Laws 1999, LB 105, § 5.

**71-1577 Local housing agency; created; when.**

In each city and county of this state which has not previously established a housing agency or authority, there is hereby created a local housing agency. Such agency shall not be deemed to be established under the Nebraska Housing Agency Act, nor shall it be authorized to conduct any business or exercise any of its powers, unless and until the governing body of the city or county declares by resolution or ordinance that a need exists for such a local housing agency to function in such city or county and finds that there exists a shortage of decent, safe, and sanitary housing in such city or county that is available and affordable to all residents regardless of income.

**Source:** Laws 1999, LB 105, § 6.

**71-1578 Local housing agency; resolution or ordinance; effect.**

In order for a city or county to establish a local housing agency which may conduct business and exercise its powers, the governing body of such city or county desiring to establish such agency shall adopt a resolution or ordinance declaring that there is a need for a local housing agency in such city or county because there exists a shortage of decent, safe, and sanitary housing in such city or county that is affordable to all residents thereof, regardless of income. No further action or findings shall be necessary. Upon the adoption of such resolution or ordinance, the local housing agency shall be established and shall have perpetual existence unless dissolved in accordance with law.

**Source:** Laws 1999, LB 105, § 7.

**71-1579 Local housing agency; name.**

Each local housing agency established pursuant to the Nebraska Housing Agency Act shall adopt, within or together with the resolution or ordinance required under section 71-1578, a name for all legal and operating purposes. The name so adopted shall include a reference to the geographic locus of the agency and such other name or identifier as the governing body establishing the agency shall determine. A local housing agency established under prior law may adopt a name consistent with this section by resolution or ordinance adopted by at least two-thirds of such agency's entire board of commissioners and approved by the governing body of the city or county establishing such agency.

**Source:** Laws 1999, LB 105, § 8.



**71-1580 Local housing agency; evidence of establishment.**

A duly certified copy of the resolution or ordinance establishing a local housing agency shall, in any proceeding in which such evidence may be required, be conclusive evidence that such agency has been properly established and is authorized to transact business and exercise its powers under the Nebraska Housing Agency Act.

**Source:** Laws 1999, LB 105, § 9.

**71-1581 Regional housing agency; resolution or ordinance to establish.**

Any two or more cities, two or more counties, or any combination of cities and counties may, by resolution or ordinance of their separate governing bodies, establish a regional housing agency by adopting a joint resolution or ordinance declaring that there is a need for a regional housing agency to provide decent, safe, and sanitary housing that is affordable to persons of low and moderate income residing in a multijurisdictional area and that this need would be more efficiently served by the establishment of a regional housing agency.

**Source:** Laws 1999, LB 105, § 10.

**71-1582 Regional housing agency; resolution or ordinance; effect.**

Upon the adoption of a resolution or ordinance, as provided in section 71-1581, by two or more cities or counties, a regional housing agency shall be established, and except as otherwise provided in the Nebraska Housing Agency Act, such regional housing agency shall have perpetual existence unless dissolved in accordance with law.

**Source:** Laws 1999, LB 105, § 11.

**71-1583 Regional housing agency; name.**

Each regional housing agency established pursuant to the Nebraska Housing Agency Act shall adopt, within or together with the resolution or ordinance required under section 71-1581, a name for all legal and operating purposes. The name so adopted shall include a reference to the geographic locus of the agency and such other name or identifier as the governing bodies establishing the agency shall determine. A regional housing agency established under prior law may adopt a name consistent with this section by resolution or ordinance adopted by at least two-thirds of such agency's entire board of commissioners and approved by the governing bodies of all political subdivisions establishing such agency.

**Source:** Laws 1999, LB 105, § 12.

**71-1584 Regional housing agency; evidence of establishment.**

A duly certified copy of the resolution or ordinance establishing a regional housing agency shall, in any proceeding in which such evidence may be required, be conclusive evidence that such agency has been properly established and is authorized to transact business and exercise its powers under the Nebraska Housing Agency Act.

**Source:** Laws 1999, LB 105, § 13.

**71-1585 Regional housing agency; additional members; procedure.**

After a regional housing agency has been established, any additional city or county may elect to participate as a member of such regional housing agency upon adoption of a resolution or ordinance to such effect containing, in substance, the findings provided in section 71-1581, if a majority of the existing commissioners of such regional housing agency and all participating political subdivisions, by action of their respective governing bodies, consent to such additional member or members.

**Source:** Laws 1999, LB 105, § 14.

**71-1586 Regional housing agency; withdrawal; conditions; effect.**

Any participating city or county may withdraw from participation in the regional housing agency by resolution or ordinance of its governing body. Any withdrawal from participation shall be subject to, and may occur only pursuant to, the following conditions:

(1) The regional housing agency has no bonds, notes, or other obligations outstanding or adequate provision for payment of such bonds, notes, or other obligations, by escrow or otherwise, has been made. Past performance without breach or default of an obligation secured only by one or more developments or the income thereof shall be deemed to be adequate provision;

(2) The withdrawing city or county has made adequate provision for the performance of all of its outstanding obligations and responsibilities as a participant in the regional housing agency;

(3) The withdrawing city or county has given six months' written notice to the regional housing agency and all other cities and counties participating therein; and

(4) The commissioner or commissioners appointed by the withdrawing city or county shall be deemed to have resigned as of the date upon which the withdrawal is effective. Vacancies on the board of commissioners created by withdrawal of a city or county shall be filled in such manner as the cities and counties remaining as participants shall agree.

Notwithstanding the withdrawal of any participating city or county, the legal title to and operating responsibility for any development located outside the area of operation of the regional housing agency remaining after such withdrawal has occurred shall continue to be vested in the regional housing agency unless a different arrangement is made.

**Source:** Laws 1999, LB 105, § 15.

**71-1587 Regional housing agency; become local housing agency or dissolve; when.**

If only one city or county remains as a participant in any regional housing agency, such regional housing agency shall become the local housing agency of the remaining city or county at the discretion of its governing body, or such regional housing agency shall be dissolved and its assets and liabilities transferred to another existing housing agency or to a city or county or other public agency in the manner provided for dissolution of a local housing agency under sections 71-15,108 to 71-15,111.

**Source:** Laws 1999, LB 105, § 16.

**71-1588 Area of operation; effect on jurisdiction.**

(1) The area of operation of a local housing agency shall be, depending upon the classification of the political subdivision establishing the agency, one of the following:

(a) In the case of a local housing agency established by a city, the agency's area of operation shall be the city and the area within ten miles from the territorial boundaries thereof. For purposes of this subdivision, home county means the county in which the city establishing the local housing agency is situated. Depending upon the geographical location of the city, an area of operation may include portions of one or more counties. It may also include areas lying within the territorial boundaries of cities outside the city establishing the local housing agency. In order to resolve territorial conflicts, the following rules shall apply:

(i) In the case of the local housing agency's home county, it may operate outside of the area described in subdivision (a) of this subsection in the unincorporated areas of the home county without the need for the county's consent unless the home county has established its own local housing agency. If the home county has established a local housing agency, then the city's local housing agency may so operate outside the area described in this subdivision only with the consent of the county board;

(ii) In the case of incorporated areas of the home county, the local housing agency may only operate within the territorial boundaries thereof by consent of the other city and its local housing agency, if any;

(iii) In the case of unincorporated portions of counties other than the local housing agency's home county, it may operate only with the consent of the county board, regardless of whether the other county has established a local housing agency;

(iv) In the case of incorporated areas within other counties, it may operate only with the consent of the governing body of any city incorporating such areas and, if the other city has also established its own local housing agency, also with the consent of the other local housing agency; and

(v) Notwithstanding any other provision of this section, a local housing agency may, subject to the limitations stated in subdivision (28) of section 71-15,113, provide rental assistance to persons residing outside the agency's area of operation as defined in this section;

(b) In the case of a local housing agency established by a county, the agency's area of operation shall be all of the county except that portion which lies within the territorial boundaries of any city in which a local housing agency has been established;

(c) In the case of a regional housing agency, the agency's area of operation shall be an area equivalent to the total areas of operation which the local housing agencies, if created separately by political subdivisions establishing the regional housing agency, would have when aggregated. The area of operation of a regional housing agency shall not include any area which lies within the territorial boundaries of any city or county in which a local housing agency has been established and which city or county is not a participant in the regional housing agency. The local housing agency of the city or county and the governing body of the city or county may consent to the operation of one or more developments by the regional housing agency within the city's or county's territorial boundaries; and

(d) Whether due to changes in the boundaries of cities or counties which have established local housing agencies, or the establishment of new local housing agencies, or for any other reason, territories may exist that include the area of operation of two or more local housing agencies. Such areas shall be areas of concurrent jurisdiction. No local housing agency whose area of operation includes an area of concurrent jurisdiction shall construct, acquire, or develop any new housing development within the area of concurrent jurisdiction except upon sixty days' prior written notice to all other local housing agencies existing within such area of concurrent jurisdiction. The notice shall specify the location, size, and general nature of the proposed new development. Any local housing agency receiving the notice shall have thirty days to send written objections thereto to the local housing agency sending the notice and proposing the new development. If written objections are timely made, the local housing agency proposing the new development shall not proceed unless and until both agencies have made a good faith effort to resolve their differences and, failing such resolution, the proposing local housing agency shall submit the matter to the governing body of the city or county in which the proposed new development is planned to be located. The governing body, after allowing both local housing agencies to be heard, shall decide whether the new development shall be constructed, acquired, or developed by the local housing agency proposing such action.

(2) Any housing development established by a housing agency pursuant to law shall continue to be maintained and operated by the housing agency so establishing the development or its designee unless the development is conveyed to another housing agency or to a city, county, or other public agency or is otherwise disposed of in accordance with law.

(3) Notwithstanding the area of operation as provided in this section, all local housing agencies shall have the jurisdiction and authority to cooperate and contract with all other local housing agencies and other public agencies within this state and any public agencies of any other state, with the federal government, and with any person or entity, public or private, and wherever located, in order to carry out the purposes of the Nebraska Housing Agency Act. Such cooperation may include, but shall not be limited to, activities and operations conducted with the agreement of any public agency. The area of operation of a local housing agency shall be deemed to include any other area or areas within any city or county, regardless of location, with respect to which the city or county within whose boundaries such area or areas lie agrees to allow the local housing agency to operate.

**Source:** Laws 1999, LB 105, § 17.

#### **71-1589 Debts and liability; responsibility.**

Except to the extent such city or county or this state may expressly elect to undertake such liability, neither any city or county with respect to which a local housing agency is established, nor any city or county participating in a regional housing agency, nor the state, nor any other public agency of this state shall be responsible for the debts or liabilities of any local housing agency or regional housing agency.

**Source:** Laws 1999, LB 105, § 18.

**71-1590 Taxation of property; Indian housing authorities; payments in lieu of taxes.**

(1) The real and personal property of a local housing agency and any wholly owned controlled affiliate thereof used solely (a) for the administrative offices of the housing agency or wholly owned controlled affiliate thereof, (b) to provide housing for persons of eligible income and qualifying tenants, and (c) for appurtenances related to such housing shall be exempt from all taxes and special assessments of any city, any county, the state, or any public agency thereof, including without limitation any special taxing district or similar political subdivision. All other real and personal property of the housing agency or wholly owned controlled affiliate thereof shall be deemed to not be used for a public purpose for purposes of section 77-202 and shall be taxable as provided in sections 77-201 and 77-202.11. Property owned jointly by a housing agency or its wholly owned controlled affiliates with other nongovernmental persons or entities shall be exempt from such taxes and assessments to the extent of the ownership interest which the housing agency and its wholly owned controlled affiliates hold in the property and to the extent the property is used solely to provide housing for persons of eligible income and qualifying tenants. Nothing in this section shall be deemed to preclude a housing agency and its wholly owned controlled affiliates from entering into an agreement for the payment of all or any portion of any special assessments which might otherwise be assessed except for the exemption created by this section.

(2) A housing agency may agree to make payments in lieu of all taxes or special assessments to the county within whose territorial jurisdiction any development of such housing agency or its controlled affiliates is located, for improvements, services, and facilities furnished by the city, county, or other public agencies, for the benefit of such development. Nothing contained in this section shall be deemed to require such an agreement by a local housing agency, and in no event shall the amounts payable by the housing agency exceed the amounts which, except for the exemption provided in this section, would otherwise be payable under regular taxes and special assessments for similar properties referred to in subsection (1) of this section. All payments in lieu of taxes made by any such housing agency shall be distributed by the county to all public agencies in such proportion that each public agency shall receive from the total payment the same proportion as its property tax rate bears to the total property tax which would be levied by each public agency against property of the housing agency if the same were not exempt from taxation.

(3) The property of Indian housing authorities created under Indian law shall be exempt from all taxes and special assessments of the state or any city, village, or public agency thereof. In lieu of such taxes or special assessments, an Indian housing authority may agree to make payments to any city, village, or public agency for improvements, services, or facilities furnished by such city, village, or public agency for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, village, or public agency of the improvements, services, or facilities to be so furnished. All payments made by any such housing authority in lieu of taxes, whether such payments are contractually stipulated or gratuitous voluntary payments, shall be distributed among the cities, villages, or public agencies within which the housing project is located, in such proportion that each city, village, or public agency shall receive from the total payment the

same proportion as its ad valorem tax rate bears to the total ad valorem tax rate which would be levied by each city, village, or public agency against the properties of the Indian housing authority if the same were not exempt from taxation. For purposes of this section, (a) Indian housing authority means an entity that is authorized by federal law to engage or assist in the development or operation of low-income housing for Indians and which is established by the exercise of the power of self-government of an Indian tribe and (b) Indian law means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States Secretary of the Interior.

**Source:** Laws 1999, LB 105, § 19; Laws 2000, LB 1107A, § 1.

**71-1591 Property; exempt from judicial process.**

Except to the extent a local housing agency or its controlled affiliates may otherwise expressly agree, all real and personal property of a local housing agency and its controlled affiliates shall be exempt from execution, levy, and sale for the payment of debt or otherwise pursuant to any judicial or other process.

**Source:** Laws 1999, LB 105, § 20.

**71-1592 Agency representatives; exempt from licensing requirements; when.**

All representatives of a local housing agency, acting within the scope of carrying out the business and conducting the affairs of a local housing agency, shall be exempt from all licensing requirements imposed by any law with respect to the sale, rental, or management of real property or the improvement or development thereof, including requirements imposing any fee or charge.

**Source:** Laws 1999, LB 105, § 21.

**71-1593 Applicability of Administrative Procedure Act and procurement, operation, and disposition of property provisions.**

The following provisions of law, and any regulations relating thereto, shall not apply to a local housing agency unless the legislation imposing such requirements is expressly and specifically applicable to local housing agencies or the local housing agency expressly elects to be governed by such legislation or regulations:

- (1) The Administrative Procedure Act; and
- (2) Any law, resolution, ordinance, or regulation governing or otherwise applicable to the procurement of goods and services, or to the acquisition, operation, or disposition of property by public agencies of this state, including any requirements for delivery of payment or performance bonds by contractors.

**Source:** Laws 1999, LB 105, § 22.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1594 Local housing agency; commissioners; appointment.**

(1) When the governing body of any city or county, as the case may be, has determined by resolution or ordinance as set forth in section 71-1578 that it is expedient to establish a local housing agency:

(a) In the case of cities other than cities of the metropolitan class, the chief elected official of such city shall appoint at least five and not more than seven adult persons;

(b) In the case of cities of the metropolitan class, the chief elected official of such city shall appoint seven adult persons; and

(c) In the case of counties, the county board shall appoint at least five and not more than seven adult persons.

(2) All such persons shall be residents of the area of operation of the agency. If the selection of a resident commissioner is required under section 71-15,104, then at least one such person shall be a resident commissioner selected as provided in such section. Such persons so appointed shall constitute the governing body of the local housing agency and shall be called commissioners.

**Source:** Laws 1999, LB 105, § 23; Laws 2018, LB399, § 1.  
Effective date July 19, 2018.

**71-1595 Commissioners; powers; quorum; executive committee.**

(1) The powers of each local housing agency shall be vested in its commissioners in office. A majority of the commissioners shall constitute a quorum of the agency for the purpose of conducting its business and exercising its powers and for all other purposes. Except for any matter with respect to which the resolution or ordinance creating the agency or its bylaws requires a higher number or proportion of votes, action may be taken by the agency upon the vote of a majority of the commissioners present and voting.

(2) Housing agencies that have twelve or more commissioners may, by resolution or bylaw, establish an executive committee of at least five commissioners. The committee shall have such powers over the management or operation of such housing agency as the commissioners of such agency shall specify and declare in the resolution establishing the executive committee.

**Source:** Laws 1999, LB 105, § 24.

**71-1596 Commissioners; appointment; procedure.**

When commissioners are appointed or reappointed by the chief elected official of a city or county, such appointments or reappointments shall be referred to the governing body of such city or county for confirmation or denial by such governing body, and such governing body shall confirm or deny any such appointment or reappointment.

**Source:** Laws 1999, LB 105, § 25.

**71-1597 Regional housing agency; commissioners; appointment.**

When the governing bodies of two or more political subdivisions have determined by resolution or ordinance pursuant to section 71-1581 to establish and participate in a regional housing agency, the chief elected officials of such political subdivisions or, if no such official exists for a participating political subdivision, then the governing body thereof, shall appoint adult persons who shall be residents of the area of operation of the regional housing agency. Such persons so appointed shall constitute the governing body of the regional housing agency and shall be called commissioners. The number of commission-

ers who shall be appointed by each participating political subdivision shall be as agreed upon by the participating political subdivisions.

**Source:** Laws 1999, LB 105, § 26.

**71-1598 Commissioners; terms.**

In the case of local housing agencies, the commissioners who are first appointed shall be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed for terms of five years. In the case of housing agencies when the appointing authority has elected to have more than five commissioners as provided in section 71-1594 or has elected to add one or two commissioners to a presently existing housing agency, the sixth commissioner who is first appointed shall be designated to serve for a term of four years and the additional commissioners who are first appointed shall be designated to serve for terms of five years from the date of appointment, but thereafter the commissioners shall be appointed for terms of five years.

**Source:** Laws 1999, LB 105, § 27; Laws 2018, LB399, § 2.  
Effective date July 19, 2018.

**71-1599 Commissioners; vacancies.**

All vacancies shall be filled for the unexpired terms. A vacancy shall be filled by the same authority and in the same manner as the previous commissioner whose position has become vacant was appointed.

**Source:** Laws 1999, LB 105, § 28.

**71-15,100 Certificate of appointment or reappointment.**

A certificate of the appointment or reappointment of any commissioner shall be filed with the secretary or clerk of the governing body making or confirming the appointment or reappointment, and such certificate shall be conclusive evidence of the proper appointment of such commissioner.

**Source:** Laws 1999, LB 105, § 29.

**71-15,101 Commissioner; qualifications; requirements.**

Every commissioner shall be a resident of the area of operation of the housing agency which he or she has been appointed to serve. However, if after appointment a commissioner ceases to reside in the local housing agency's area of operation, his or her term of office shall automatically terminate and a successor shall be appointed to fill such vacancy in the manner provided in sections 71-1594 to 71-15,105. Any commissioner who ceases to reside within the area of operation of the local housing agency in which such commissioner serves shall immediately so inform the board of commissioners of the agency and the appointing authority of his or her change in residence. No person who has been convicted of a felony shall be eligible for appointment or service as a commissioner.

Any commissioner of a local housing agency for a city of the metropolitan class shall, at the expense of the local housing agency, attain a commissioner's certification from the National Association of Housing and Redevelopment Officials, or equivalent certification from a nationally recognized professional association in the housing and redevelopment field as determined by the local



housing agency, within twelve months after the date of appointment or by December 31, 2019, whichever is later, or shall be deemed to have resigned his or her position effective at the end of that time.

**Source:** Laws 1999, LB 105, § 30; Laws 2018, LB399, § 3.  
Effective date July 19, 2018.

**71-15,102 City of the metropolitan class; commissioner; requirements.**

In the case of a city of the metropolitan class, (1) at least one commissioner shall be a member of a racial minority and (2) at least one commissioner shall have experience in the following professions: (a) Real estate development or management; (b) accounting, banking, or finance; and (c) law or business management. A single commissioner may satisfy more than one of the requirements provided in subdivisions (2)(a) through (c) of this section.

**Source:** Laws 1999, LB 105, § 31; Laws 2018, LB304, § 1; Laws 2018, LB399, § 4.  
Effective date July 19, 2018.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB304, section 1, with LB399, section 4, to reflect all amendments.

**71-15,103 Commissioner; city representative; required; when.**

The governing body of any city other than a city of the metropolitan class in which a housing agency has been or may be created may appoint one of its members to serve as one of the five commissioners of such housing agency for such term as the governing body may determine. Notwithstanding any other provision of the Nebraska Housing Agency Act, it shall not be considered a conflict of interest if such person so appointed as a commissioner votes on any matter involving the city. If the governing body of the city intends that a commissioner's appointment is made with the intention that such commissioner represent the city, then his or her certificate of appointment shall so state. If any such commissioner so appointed and designated ceases to serve as a member of the governing body of a city, then his or her term of office shall automatically terminate and a successor shall be appointed to fill the vacancy in the manner provided in sections 71-1594 to 71-15,105.

**Source:** Laws 1999, LB 105, § 32; Laws 2018, LB399, § 5.  
Effective date July 19, 2018.

**71-15,104 Resident commissioner; selection; procedure.**

(1) Each housing agency created under the Nebraska Housing Agency Act shall include among the commissioners constituting the governing body of such local housing agency at least one commissioner who shall be known as a resident commissioner. For purposes of this section, resident commissioner means a member of the governing board of a local housing agency whose eligibility for membership is based upon such person's status as a recipient of direct assistance from the agency except as otherwise provided in this section.

(2) No later than thirty days after any vacancy in the office of a resident commissioner, the local housing agency shall notify any resident advisory board or other resident organization and all adult persons directly assisted by such agency to the effect that the position of resident commissioner is open and that if any such person is interested in being considered as a candidate for the

position, such person should notify the local housing agency within thirty days of the person's willingness to be considered and to serve in the position.

(3) The resident commissioner shall be selected, either by an election or by appointment, as follows:

(a) The housing agency may hold an election, allowing each adult direct recipient of its assistance to vote by secret written ballot, at such time and place, or through the mail, as such agency may choose, all to be conducted within thirty days after the receipt of names of candidates as provided in subsection (2) of this section. The candidate receiving the most votes shall serve as resident commissioner;

(b) If the housing agency decides not to hold an election, the names of all persons interested who have notified the housing agency of their interest in so serving shall be forwarded to the mayor or to the county board, as the case may be, and the resident commissioner shall be appointed from the list of names, as provided in section 71-1594, subject to confirmation as provided in section 71-1596. In the case of a regional housing agency, the regional board of commissioners shall make such an appointment from among the persons interested in such position; and

(c) If no qualified person has submitted to the local housing agency his or her name as a candidate for the position, then the mayor, county board, or regional housing agency, as the case may be, shall fill the position from among all adult persons receiving direct assistance from the agency subject to confirmation, in the case of cities and counties, pursuant to section 71-1596. If a local housing agency owns fewer than three hundred low-income housing units which, for purposes of this subdivision, does not include units of housing occupied by persons assisted under any rental assistance program and the housing agency has received no notification of interest in serving as a resident commissioner as provided in this section, no resident commissioner shall be required to be selected.

**Source:** Laws 1999, LB 105, § 33; Laws 2018, LB399, § 6.  
Effective date July 19, 2018.

#### **71-15,105 Commissioner; removal; procedure.**

(1) A commissioner of a local housing agency may be removed for neglect of duty, misconduct in office, or conviction of any felony by the chief elected official of the city or county appointing the commissioner, or if no chief elected official exists, then by the governing body. A commissioner of a regional housing agency may be removed for any of such grounds by the governing body of the city or county that originally appointed the commissioner.

(2) The chief elected official or the governing body, as the case may be, which seeks to remove a commissioner shall send a notice of removal to such commissioner, which notice shall set forth the charges against him or her. Unless within ten days from the receipt of such notice the commissioner files with the clerk or secretary of the city's or county's governing body a request for a hearing before the governing body, the commissioner shall be deemed removed from office. If a request for hearing is so filed, the governing body of the city or county, as the case may be, shall hold a hearing not sooner than ten days after the date a hearing is requested, at which hearing the commissioner shall have the right to appear in person or by counsel and the governing body shall determine whether the removal shall be upheld. If the removal is not

upheld by the governing body, the commissioner shall continue to hold his or her office.

(3) All actions taken by a board of commissioners shall be presumed valid unless otherwise shown by clear and convincing evidence.

**Source:** Laws 1999, LB 105, § 34.

**71-15,106 Officers; executive director; employees.**

The commissioners of each housing agency shall elect a chairperson and vice-chairperson from among the commissioners and shall have power to employ an executive director who shall serve as ex officio secretary of the local housing agency. The agency may also employ legal counsel or engage the attorney of the city or county served by the agency for such legal services as the agency may require unless such employment or engagement will result in an ethical or legal violation. The agency may employ accountants, appraisers, technical experts, and such other officers, agents, and employees as the agency may require and shall determine their qualifications, duties, compensation, and terms of office. A local housing agency may delegate to one or more of its agents or employees such powers and duties as it may deem proper.

**Source:** Laws 1999, LB 105, § 35.

**71-15,107 Commissioner; expenses.**

A commissioner shall receive no compensation for his or her services but shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in connection with the discharge of his or her duties on the same basis as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1999, LB 105, § 36.

**71-15,108 Local housing agency; dissolution; conditions.**

Any local housing agency may by written resolution elect to dissolve, except that no such dissolution or any transfer of property pursuant to dissolution shall occur unless the following conditions are met:

(1) The governing body of the city or county which established the local housing agency so dissolving has consented thereto;

(2) The dissolving agency has designated another local housing agency or another city, county, or public agency of this state, which may be the city or county for which the agency was formed, as the transferee of its assets and liabilities in dissolution;

(3) The local housing agency, city, county, or other public agency receiving such property or assets and the political subdivision which established it consent thereto by resolution or ordinance; and

(4) All obligees of bonds or other evidences of indebtedness of such transferring or dissolving agency or the trustees for such obligees or the federal government if the bonds or other obligations are secured by any contract right pursuant to a contract between the transferring agency and the federal government have consented thereto in writing or as otherwise provided in the contracts. No such transfer shall in any way diminish or impair the obligations of any transferring agency.

**Source:** Laws 1999, LB 105, § 37.

**71-15,109 Local housing agency; dissolution; transfer of rights, property, and liability.**

Within a reasonable time subsequent to approval by all necessary parties of a local housing agency's resolution to dissolve, the agency shall transfer its assets and liabilities to the transferee designated in the resolution. Upon the transfer of any of the agency's property, the receiving local housing agency, city, county, or other public agency shall have all right, title, and interest in and to such property and all duties and obligations arising out of the transfer of such property as the transferring agency had. Upon dissolution and transfer, all rights, contracts, agreements, obligations, and property, real and personal, of such transferring agency shall be in the name of, and vest in, such receiving local housing agency, city, county, or other public agency and all obligations of such transferring local housing agency shall be the obligations of such receiving local housing agency, city, county, or other public agency. All rights and remedies of any person against such transferring local housing agency may be asserted, enforced, and prosecuted against such receiving local housing agency, city, county, or other public agency to the same extent as they might have been asserted, enforced, and prosecuted against such transferring local housing agency.

**Source:** Laws 1999, LB 105, § 38.

**71-15,110 Local housing agency; dissolution; effect on area of operation.**

After any dissolution and transfer, notwithstanding anything contained in section 71-1588, the area of operation of the receiving local housing agency shall include, nonexclusively, the area of operation of the transferring local housing agency.

**Source:** Laws 1999, LB 105, § 39.

**71-15,111 Regional housing agency; dissolution; procedure.**

A regional housing agency desiring to dissolve may do so in the same manner as provided in sections 71-15,108 and 71-15,109, except that consent of all participating cities and counties shall be required and the transfer of property and assets of the regional housing agency upon dissolution may be effected either to a single transferee or to multiple transferees, as the agency shall determine, subject to approval by the participating political subdivisions.

**Source:** Laws 1999, LB 105, § 40.

**71-15,112 Local housing agency; general powers.**

(1) A local housing agency shall possess all powers necessary, convenient, or desirable in carrying out the purposes of the Nebraska Housing Agency Act, exercising any power provided in the act, and engaging in any activity related to furthering the purposes of the act. Such powers shall include, but shall expressly not be limited to, the powers enumerated in this section and section 71-15,113 or stated elsewhere in the act or in other applicable law.

(2) The powers enumerated in the act may be exercised singly or in any combination. The enumeration of any power shall not require, expressly or by implication, that any local housing agency is required to exercise such power.

**Source:** Laws 1999, LB 105, § 41.

**71-15,113 Local housing agency; powers enumerated.**

In addition to any other express, constructive, or implied powers existing under applicable law, a local housing agency shall have the following powers, which may be exercised singly or in any combination, the enumeration of which shall not be construed to limit the powers of any local housing agency to the powers so enumerated:

(1) To have perpetual existence unless terminated by proper authority as provided by law;

(2) To sue and, subject to the limitations, privileges, and immunities provided by applicable law, be sued;

(3) To adopt a seal and to alter such seal from time to time;

(4) To adopt, amend, repeal, and restate bylaws;

(5) To adopt, promulgate, and enforce rules and regulations related to carrying out the purposes of the local housing agency and exercising its powers and to amend or repeal such rules and regulations from time to time;

(6) To enter into, execute, and perform contracts, instruments, and agreements of every kind and description within or without its area of operation except where otherwise expressly provided in furtherance of the purposes of the Nebraska Housing Agency Act and in connection with the exercise of any of its powers;

(7) To issue bonds and other debt instruments as provided in sections 71-15,114 to 71-15,121 and to secure the repayment of such bonds and debt instruments as provided in subdivision (24) of this section;

(8) Subject to the limitations elsewhere provided in the act, to guarantee any indebtedness or performance of any controlled affiliates or other public bodies of this state. The housing agency shall not guarantee the indebtedness or performance of any other party, except that the housing agency may create a special limited fund for the purposes provided in section 71-15,131;

(9) To enter into and perform interagency and intergovernmental agreements of every kind and description; and to act in consortium with, as agent or manager for, or pursuant to agreement or contract with other local housing agencies and any and all state, federal, and local public agencies to carry out the purposes of the act and to exercise any of its powers;

(10) To form and operate nonprofit corporations and other affiliates of every kind and description, which may be wholly or partially owned or controlled, for carrying out the purposes of the act and in connection with the exercise of any of the powers of a local housing agency;

(11) To enter into agreements of every kind and description in furtherance of the purposes of the act and in connection with the exercise of any of the powers of a local housing agency. Consistent with the limitations upon their powers set forth in sections 71-15,122 to 71-15,129, local housing agencies may participate in agreements with persons and for-profit entities whose purpose is solely that of pecuniary gain, as well as with nonprofit entities and persons who seek no pecuniary gain. The participation of a local housing agency in any arrangement with other persons or entities, including for-profit persons and entities, shall not cause any activity engaged in by the agency to be characterized as proprietary nor deprive the agency of any privilege or immunity otherwise existing under law;

(12) Pursuant to approval of the local housing agency's board of commissioners, acting through one or more of its commissioners or other designees, to conduct examinations and investigations with respect to any matter relating to the purposes of the act and to make available to public agencies and officials and the public all findings, conclusions, and recommendations resulting from such examinations and investigations; to subpoena and compel the attendance of witnesses and the production of documents, books, records, papers, electronic and other data, and things; to issue commissions for the examination of witnesses who are outside this state, are unable to attend a hearing, or are excused from such attendance and to issue commissions for the examination of documents, books, records, papers, electronic and other data, and things outside this state; and to administer oaths and receive sworn or unsworn testimony or other proofs at public or nonpublic hearings;

(13) To invest or cause to be invested any funds held as reserves or sinking funds and any sums not required for immediate disbursement in connection with the operations of the agency, its developments, and its programs in property or securities in any manner allowable by law with respect to funds of this state or any public agency of this state, except that if any funds are pledged as security for a debt and the debt or security instrument specifies the permitted investments, such debt or security instrument provision shall control the permitted investments of such funds; to cooperate with this state or any public agency of this state with respect to investing the housing agency's funds; to enter into agreements and contracts with respect to the investment of its funds upon such terms and conditions as the agency deems reasonable and appropriate; and to purchase the agency's own bonds or other securities at such price as the agency shall in its discretion determine to be acceptable, except that no funds of an agency shall be placed in investments which the agency believes at the time of investment are highly speculative or involve a high degree of foreseeable risk;

(14) To conduct studies, assessments, and analyses of living conditions and affordable housing and community development and redevelopment needs and the means and methods through which unsatisfactory living conditions may be improved and affordable housing and community development and redevelopment needs may be met; to participate in the planning processes conducted by units of local government having jurisdiction over the agency's area of operation and to make recommendations with respect to the provision of decent, safe, and sanitary dwelling accommodations to persons of eligible income and the improvement of the social and economic conditions affecting such persons; to evaluate the supply and adequacy of financing available for the development and rental of affordable housing and for the purchase of decent, safe, and sanitary dwelling accommodations by persons of eligible income; and to identify the means and methods through which adequate sources of financing for such purposes may be developed and maintained;

(15) To plan, prepare, carry out, develop, construct, acquire, improve, reconstruct, renovate, rehabilitate, enlarge, reduce, alter, manage, own, lease, and operate housing, housing projects or developments, or any portions of housing projects or developments;

(16) To finance an agency's developments, operations, and other activities in such manner, utilizing such public or private source or sources of revenue, and employing such financing methods or techniques as the agency deems appropriate; to combine revenue derived from different sources, including equity

investments and borrowings, in any combination and proportion as the agency deems appropriate; and to create and to enter into arrangements concerning mixed-finance developments;

(17) To maintain, repair, and replace all housing developments, any portions thereof, and any facilities and improvements contained therein or associated therewith;

(18) Subject only to the limitations contained in sections 71-15,122 to 71-15,129, to lease or rent any dwellings, facilities, or other real or personal property owned, controlled, or possessed by the agency, or with respect to which the agency has contractual rights permitting such lease or rental, for such terms, upon such conditions and lease terms, and in exchange for such rentals as the agency may from time to time in its discretion determine; to establish rents in such manner and in such amounts as the agency may deem appropriate, including, but not limited to, rents based upon family income, determined with such adjustments and exclusions as the agency deems appropriate, minimum rents, flat rents, graduated rents, rent ranges, and maximum rents, any of which may vary among the agency's developments; and to establish any other standards and conditions relating to rentals that the agency may deem appropriate;

(19) To acquire title, long-term and short-term leasehold interests, possessory rights, options upon, cooperative interests in, or any other interest in or relating to land, dwellings, facilities, or any other real or personal property by purchase, gift, grant, bequest, devise, lease, contract, or any other manner or arrangement; to acquire any such property or any interest therein through the exercise of the power of eminent domain as provided in subdivision (39) of this section; to take over or lease and manage any housing development or undertaking in which a local government or the state or federal government has an interest; and to transfer, donate, sell, lease, exchange, convey, assign, or otherwise dispose of any of its property or any interest therein to any person, organization, or entity, either public or private, nonprofit or for-profit; and in such regard:

(a) A local housing agency may sell or lease any real or personal property, or any interest therein, with or without public bidding, as the agency in its sole discretion may deem appropriate. Any acquisition or disposition of property or any interest therein may occur upon such terms and conditions and in exchange for such prices, or without consideration, as the agency shall deem appropriate, if such actions are taken in furtherance of the purposes of the act and subject to the limitations contained in sections 71-15,122 to 71-15,129; and

(b) At and subsequent to an acquisition of occupied property, a local housing agency may permit existing tenants therein to remain in occupancy upon such terms and conditions and for such periods as the agency shall deem appropriate, notwithstanding that such tenants do not qualify as persons of eligible income;

(20) To develop, acquire, own, lease, and operate properties and facilities that are nonresidential in character which are used (a) for the agency's office, administrative, management, or maintenance purposes or (b) for educational, governmental, or other public purposes by the agency or others;

(21) To develop, acquire, own, or lease community facilities and to provide such facilities to any public agency or to any person, agency, institution, or organization, public or private, for recreational, educational, health, or welfare

purposes for the benefit and use of the local housing agency, for occupants of its dwelling accommodations, persons of eligible income, or elderly or handicapped persons, or for any combination of the persons listed in this subdivision, and which facilities may also serve the general public and the provision of such community facilities may be with or without charge therefor as in the local housing agency's discretion shall be deemed advisable to promote the public purposes of the act; to operate or manage community facilities itself, or as agent for any public agency, or for any person, institution, or organization, public or private; and to receive compensation therefor, if any, as the parties may agree;

(22) To carry out plans, programs, contracts, and agreements of every kind and description and to provide grants, guarantees, and other financial assistance to public or private persons or entities, whether nonprofit or for-profit, in order to rehabilitate, maintain, procure, and preserve existing affordable housing stocks in safe, decent, and sanitary condition and to ensure that they remain affordable to persons of eligible income; in connection therewith, to impose or agree to such terms and conditions concerning the term of affordability and other matters as the local housing agency shall deem appropriate;

(23) Subject to the limitations contained in sections 71-15,122 to 71-15,129, to establish and apply such criteria and requirements relating to eligibility for any assistance administered or provided by the agency as the agency shall from time to time determine to be necessary, appropriate, or desirable, including, without limitation, criteria and requirements relating to income, work, or employment, child care, education, job training, and personal or family self-sufficiency; in addition to establishing eligibility, to utilize such criteria and requirements for determining the amount and duration of any assistance to be provided to a beneficiary of such assistance; to establish such exclusions from income for purposes of determining eligibility as the agency shall deem appropriate; and to adopt and administer lawful preferences which may include preferences for working persons and families;

(24) To mortgage, encumber, pledge, convey by trust deed or deed to secure debt, assign, or otherwise grant or consent to a lien or other security interest in, any real or personal property, or any interest therein, owned or held by the agency or in which the agency may hold an interest. Any and all such actions may be taken to provide security for the repayment of borrowed funds, or to secure any guarantee of such repayment or any other performance by the agency, or to secure any payment, guarantee, or performance of any controlled affiliate of the agency in furtherance of the purposes of the act. Any such action shall be upon such terms and conditions as the agency shall in its discretion from time to time determine. The terms and conditions of any mortgage or other instrument granting or consenting to a security interest in property of a local housing agency may include any and all provisions that are deemed necessary by the agency. Such terms and conditions may, among other things, contain a power of sale or right of foreclosure in the event of nonpayment or other default thereunder. All actions taken by a local housing agency authorized in this section shall be consistent with the requirements of section 71-15,130 and shall comply with the requirements of section 71-15,129, where such requirements are applicable;

(25) Subject to the limitations contained in section 71-15,130:

(a) With respect to qualifying tenants:



- (i) To make grants or subsidy payments to such persons;
- (ii) To act as a guarantor, borrower, fiduciary, or partner in programs which provide financing to such persons;
- (iii) To make loans for the purpose of assisting such persons to become homeowners or economically self-sufficient when such persons are not otherwise qualified, or need such assistance to become qualified, to borrow from private financial institutions;
- (iv) To purchase loans made in connection with or encumbering housing for such persons; and
- (v) To engage in mortgage rate buy-downs to enhance the availability of mortgage financing that is affordable to qualifying tenants;
- (b) To make loans, including acquisition, development, construction, and rehabilitation loans, long-term mortgage loans, and guarantees, to or for the benefit of (i) affiliates of the housing agency or (ii) persons, firms, partnerships, associations, joint ventures, or corporations, public or private, whether non-profit or for-profit, in conjunction with loans provided by private financial institutions, for purposes of developing and constructing housing for persons of eligible income, and for mixed-income housing developments;
- (c) For the benefit of qualifying tenants, to enter into and perform contracts, agreements, and arrangements of every kind and description with banks, thrift institutions, credit unions, mortgage bankers, and other lenders to enhance the supply of:
  - (i) Mortgage financing affordable to such persons; and
  - (ii) Financing for the production of rental and fee-ownership housing for occupancy for such persons;
- (d) To enter into commitments relating to any action authorized under this subdivision;
- (e) To charge such fees and impose such repayment terms and other terms and conditions concerning loans, mortgages, guarantees, mortgage subsidies, and other forms of assistance provided by the agency as the agency shall from time to time determine to be necessary or appropriate;
- (f) To not lend its credit or otherwise act as a guarantor or surety for the indebtedness or performance of any other person or entity, other than its own controlled affiliates and any other public body of this state, unless the housing agency creates a special limited fund for such purpose as provided in section 71-15,131; and
- (g) To not make loans directly, or indirectly through a controlled affiliate, except as provided in subdivision (25) of this section;
- (26) To forgive, compromise, or forebear from collecting or enforcing, wholly, partially, temporarily, or permanently, any debt or obligation owed to the local housing agency;
- (27) To develop, acquire, own, hold, lease, rent, and operate mixed-income developments, subject to the limitations contained in section 71-15,124;
- (28) To administer rental and relocation assistance programs of every kind and description on its own behalf or for others within its area of operation and, to the extent such agency determines such administration to be feasible, in any area elsewhere in this state (a) with respect to which a local housing agency has not been established or (b) with the consent of any local housing agency

established to serve the area in which such assistance would be administered; and in connection with the administration of such assistance, to make payments relating to relocations and rent subsidy payments to persons of eligible income or to others, including landlords, on behalf of persons of eligible income. Rental assistance programs administered by a local housing agency may be tenant-based, in which event the assistance is provided to or for the benefit of the tenant, or such programs may be development-based, in which event the assistance is connected to particular real property;

(29) To purchase and maintain in force bonds and insurance of such types and for such purposes as the agency deems appropriate; to pay premiums and charges for all bonds and policies of insurance purchased by the agency, which bonds and policies of insurance benefiting or insuring the agency shall be in such amounts, contain such terms and conditions, provide for such deductibles, be in such form, and be issued by such companies as the agency shall deem appropriate; and to self-insure and to form and participate in consortia, insurance pools, and other organizations owned or operated by housing agencies for the purpose of insuring such agencies, which consortia, pools, or organizations may include units of government or public agencies other than housing agencies. An agency may purchase and maintain insurance covering the liability of any commissioner, officer, employee, or agent of the agency arising in connection with the agency's business or affairs;

(30) To indemnify any commissioner, officer, or employee of the agency as provided in sections 71-15,143 and 71-15,144;

(31) To provide directly or to contract for, arrange, or cooperate with any person or entity, public or private, including any other public agency, and to utilize its property to provide services or make financial or other contributions of every kind and description to enhance the social and economic well-being of residents of the agency's housing developments and other persons of eligible income; to create and operate accounts for the benefit of persons and families participating in activities and programs for the enhancement of individual and family economic self-sufficiency; and to award scholarships and to conduct or make provision for educational and training programs of every kind and description. Except as otherwise provided in the act, the agency may establish and collect fees or seek reimbursement of costs in connection with the delivery of programs and services;

(32) To borrow money or accept grants and other forms of assistance, financial and otherwise, from the local, state, or federal government in connection with any activity or program furthering the purposes of the act; to take all actions necessary to agree to and fully comply with all requirements and conditions of any state or federal program, grant, loan, or program providing services or assistance to the agency, its programs, its properties and housing developments, and the residents of such housing developments; and to perform all responsibilities and obligations of the agency under any contract or agreement with state or federal authorities and imposed by applicable state or federal law and regulation with respect to such state or federal assistance. Without limiting such provisions, a housing agency may:

(a) Take over, lease, or manage any development or undertaking constructed or owned by the state, or any public agency thereof, or the federal government;

(b) Participate in any plan or program of the state, or any public agency thereof, or the federal government, which provides revenue that may be used

for carrying out the purposes of the act, including without limitation any program involving the issuance of bonds, special fees or taxes, or tax credits;

(c) Operate and administer any program providing rental assistance for itself or on behalf of others; and

(d) Comply with such conditions and enter into such mortgages, trust indentures, leases, agreements, or arrangements as may be necessary, convenient, or desirable for the purposes of this subdivision.

It is the purpose and intent of the act to authorize every housing agency to do all things necessary or desirable to secure the financial aid or cooperation of the state and federal governments and their public agencies in the development, maintenance, operation, or disposition of any housing development or other activity undertaken by such housing agency to carry out the purposes of the act;

(33) To borrow money and accept grants and other forms of assistance, financial and otherwise, from private persons or entities in furtherance of the purposes of the act; except as otherwise provided under the act, to agree to and comply with all otherwise lawful requirements and conditions attached to the provision of such assistance; to enter into contracts and agreements of every kind and description with private persons and entities, nonprofit or for-profit, to acquire, create, manage, or operate housing developments including, without limitation, mixed-income developments and housing developments benefiting qualifying tenants, to supply services to the residents of such developments, and otherwise to engage in activities furthering the purposes of the act; and to undertake and perform all responsibilities and obligations of the agency under such arrangements as the agency determines to be necessary or desirable in connection therewith, if the same is not expressly prohibited by the provisions of the act;

(34) To operate and manage housing developments owned or controlled by other housing agencies or public agencies, or other persons or entities, whether private or public and whether nonprofit or for-profit, if the agency determines that such action will further the purposes of the act; to permit and provide for the operation or management of any development in which the agency holds an interest by a person or entity other than the agency, whether public or private and whether nonprofit or for-profit; to administer any program of, or provide services or assistance on behalf of, another housing agency or other public agency; to permit and provide for the management or administration of any of the agency's programs, assistance, or services by another housing agency or other public agency, or by any other person or entity, whether public or private and whether nonprofit or for-profit; and to enter into and perform contracts and agreements relating to any such management or administration upon such terms and conditions and in exchange for such compensation, if any, as the agency deems appropriate;

(35) To construct and operate facilities and programs and to provide services of every kind and description, directly or by contract or agreement with others, for the maintenance of safety and security and the protection of persons and property at or near the agency's developments; and to make, impose, and enforce rules and regulations for such purposes;

(36) To assist in the formation and operation of resident organizations, including resident councils, resident management corporations, and other nonprofit entities controlled and operated by residents of the agency's developments; to donate or loan money to such resident organizations in such amounts

and upon such terms and conditions as the agency deems appropriate; to enter into and perform contracts, agreements, and arrangements with resident organizations for the management of housing developments and other facilities and properties and for the administration of programs, assistance, or services, and for other activities, all with respect to such matters and upon such terms and conditions as the agency may from time to time deem appropriate; and to enter into partnerships, joint ventures, associations, or other arrangements with resident organizations in furtherance of the purposes of the act. Such activities may include the formation and operation of business enterprises that provide employment and other benefits to residents of the agency's housing developments and others as elsewhere permitted under the act;

(37) To develop, acquire, own, renovate, lease, and operate facilities specifically intended to house and otherwise assist homeless persons, including, without limitation, shelters and transitional housing; and to provide other assistance and services to homeless persons. Such housing and other assistance may be provided in such manner, upon such conditions, and for such duration as the local housing agency shall deem appropriate;

(38) By itself or in cooperation with others, including participation in a group or groups, to form, administer, operate, and purchase funds or plans, including, but not limited to, health care, health insurance, retirement or pension, and other plans for the benefit of employees of the local housing agency and their families;

(39) To acquire real property through the exercise of the power of eminent domain in accordance with Chapter 76, article 7. Such power shall only be exercised by the public housing agency and not any affiliate thereof, and property acquired by the exercise of eminent domain shall be used solely for the purpose of providing housing which is wholly owned by the agency or its wholly owned controlled affiliates. Public property may be so acquired only with the consent of the public agency which owns such property. An agency may acquire property through the exercise of the power of eminent domain notwithstanding that, subsequent to such acquisition but not sooner than five years thereafter, the agency may, if it determines such action to be in furtherance of the purposes of the act, convey the property so acquired, or any interest therein, to others, including private nonprofit or for-profit entities;

(40) To expend public funds in any manner related to the exercise of the powers granted to a housing agency under the act and otherwise existing under other applicable law;

(41) To join and participate in organizations and associations and to pay the costs, fees, and dues necessary to initiate and maintain such memberships and to participate in the activities of such organizations or associations;

(42) To grant, donate, or contribute funds, property, or services to others and to enter into arrangements involving the same in such manner and amount as the agency may deem appropriate if the agency determines that such action will benefit residents or other persons of eligible income or will otherwise further the purposes of the act. A housing agency may not make any grant, donation, or contribution to any candidate for political office, any campaign committee or other organization advocating the election of a political candidate, or any political action committee or other organization whose principal activity involves political action or advocacy; and

(43) To establish special or limited funds or reserves as security for or to facilitate or implement any of the powers specified in the act.

**Source:** Laws 1999, LB 105, § 42.

**71-15,114 Housing agency; borrow money and issue bonds; liability.**

(1) A housing agency may borrow money, incur indebtedness, and issue bonds, notes, or other instruments from time to time in its discretion upon such terms and conditions as it shall deem necessary or desirable for any purpose permitted under the Nebraska Housing Agency Act, including paying or retiring debt previously incurred by it. This section, without reference to other statutes of the state, shall constitute full and complete authority for the authorization, issuance, delivery, and sale of bonds, notes, or other instruments under the act, and such authorization, issuance, delivery, and sale by the housing agency shall not be subject to any conditions, restrictions, or limitations imposed by any other law. For purposes of the act, obligations of a housing agency shall include all bonds, notes, or other instruments that are evidences of indebtedness. Such obligations may also include, but not be limited to, borrowings in anticipation of the receipt of proceeds from the sale of bonds, notes, or other instruments.

(2) Neither the commissioners of a housing agency nor any person executing the bonds shall be liable personally on any bonds, notes, or other instruments by reason of the issuance thereof.

(3) The obligations of a housing agency, including any bonds, notes, or other evidences of indebtedness, shall not be a debt of the city, the county, the state, or any public agency thereof, and the obligations shall so state on their face. Except as the state, a city, a county, or any other public agency shall otherwise expressly agree, and further except as the obligations of a housing agency, duly authorized by such agreement, shall specifically and directly otherwise provide, neither the state nor any city, county, or public agency other than the housing agency issuing the bonds shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of such issuing housing agency pledged to the payment thereof or any guarantor or insurer thereof.

(4) The obligations of a housing agency shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

**Source:** Laws 1999, LB 105, § 43.

**71-15,115 Housing agency; obligations; issuance and sale.**

(1) Obligations of a housing agency shall be authorized by a resolution adopted by a vote of a majority of the board of commissioners.

(2) The obligations of an agency, including bonds, notes, and other evidences of indebtedness, may be issued in one or more series and shall bear such dates, mature at such times, bear interest at such fixed or variable rate or rates, be in such denominations, be in such form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments and at such places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

(3) The obligations of an agency, including bonds, notes, and other evidences of indebtedness, may be sold at public or private negotiated sale, without any public advertisement, at par, or at any discount or premium, as the resolution authorizing them provides. A housing agency issuing obligations may enter into such agreements and arrangements with third parties for the marketing of its obligations as it shall deem appropriate.

**Source:** Laws 1999, LB 105, § 44.

**71-15,116 Obligations; validity and enforceability.**

(1) In case any of the representatives of the housing agency whose signatures appear on any obligations cease to be commissioners, officers, or agents of the issuing agency before the delivery of such obligations, the signatures shall nevertheless be valid and sufficient for all purposes, the same as if the representatives had remained in office until delivery. Any law to the contrary notwithstanding, obligations issued pursuant to the Nebraska Housing Agency Act are fully negotiable unless otherwise provided in the resolution authorizing the same.

(2) No suit, action, or proceeding involving the validity or enforceability of any obligation of a housing agency may be commenced after delivery of the obligation. In any suit, action, or proceeding involving the validity or enforceability of any obligation of a housing agency or the security therefor, any such obligation reciting in substance that it has been issued by the housing agency to aid in financing a development or activity furthering the purposes of the act is conclusively deemed to have been issued in accordance with the act, and any development financed thereby and with respect to which such recitation is made shall be conclusively deemed to have been planned, located, and constructed in accordance with the act.

**Source:** Laws 1999, LB 105, § 45.

**71-15,117 Issuance of obligations or incurring debt; housing agency; powers.**

In connection with the issuance of obligations or the incurring of debt and in order to secure the payment of such obligations or debt, a housing agency may:

(1) Pledge all or any part of its gross or net rents, fees, or revenue to which its right then exists or thereafter comes into existence;

(2) Mortgage its real or personal property, then owned or thereafter acquired;

(3) Covenant and agree against pledging all or any part of its returns, fees, and revenue, or against mortgaging all or any part of its real or personal property to which its right or title then exists or may thereafter come into existence, or against permitting or suffering any lien on such revenue or property;

(4) Covenant and agree with respect to limitations on its right to sell, lease, or otherwise dispose of any development or any part thereof;

(5) Covenant and agree as to what other or additional debts or obligations may be incurred by it;

(6) Covenant and agree as to the obligations to be issued and as to the issuance of such obligations and as to the use and disposition of the proceeds thereof;

(7) Provide for the replacement of lost, destroyed, or mutilated obligations;

- (8) Covenant and agree against extending the time for the payment of its obligations or interest thereon;
- (9) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof;
- (10) Covenant and agree, subject to the limitations of the Nebraska Housing Agency Act, as to the rents and fees to be charged in the operation of a development or developments, the amount to be raised each year or other period of time by rents, fees, and other revenue, and as to the use and disposition to be made thereof;
- (11) Create or authorize the creation of special funds for money held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the money held in such funds;
- (12) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the minimum required amount of obligations that must be held by holders consenting to an amendment or abrogation in order to authorize the same, and the manner in which such consent may be given;
- (13) Covenant and agree as to the use, maintenance, and replacement of its real and personal property, the insurance to be carried thereon, and the use and disposition of insurance money;
- (14) Covenant and agree as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
- (15) Covenant, agree, and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;
- (16) Vest in a trustee or trustees or the holders of obligations or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations;
- (17) Vest in a trustee or trustees the right, in the event of a default by the agency, to take possession of and use, operate, and manage any housing development or part thereof, to collect the rents and revenue arising therefrom, and to dispose of such money in accordance with the agreement of the housing agency with the trustees;
- (18) Provide for the powers and duties of a trustee or trustees and to limit their liabilities;
- (19) Provide the terms and conditions upon which the trustee or trustees or the holders of obligations or any proportion of them may enforce any covenant or rights securing or relating to the obligations;
- (20) Purchase letters of credit, bond insurance, or any other credit enhancement device that would establish or increase marketability of its obligations;
- (21) Pay its obligations with income, revenue, or loan repayments of the development financed with the proceeds of such obligations, or with such proceeds together with a grant from the federal government, the state, or any public agency thereof, in aid of such development;
- (22) Exercise all or any part or combination of the powers granted in this section;

(23) Make covenants and agreements other than and in addition to the covenants expressly authorized in this section, of like or different character; and

(24) Make any covenants and agreements and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the agency, to assure the marketability of its obligations, although the covenants, acts, or things are not enumerated in this section.

**Source:** Laws 1999, LB 105, § 46.

**71-15,118 Obligee; rights.**

An obligee of a housing agency, in addition to all other rights conferred on the obligee, subject only to any contractual restrictions binding upon the obligee, may:

(1) By mandamus or other action or proceeding for legal or equitable remedies, compel the housing agency and its representatives to perform each and every term, provision, and covenant contained in any contract of the housing agency with or for the benefit of such obligee, and require the carrying out of all covenants and agreements of the housing agency and the fulfillment of all duties imposed upon the housing agency by the Nebraska Housing Agency Act; and

(2) By action or proceeding, enjoin any acts or things which may be unlawful or which violate any rights of the obligee.

**Source:** Laws 1999, LB 105, § 47.

**71-15,119 Obligee; powers conferred.**

A housing agency, by its resolution, trust indenture, mortgage, lease, or other contract, may in its discretion elect to confer upon any obligee holding or representing a specified amount in bonds or other instruments or holding a lease such rights as the housing agency determines are necessary or desirable in order to generate revenue or which it otherwise deems to be in its best interests and in furtherance of its purposes. Such rights, which shall be exercisable upon the happening of an event of default as defined in such resolution or instrument, are cumulative of all rights otherwise conferred and may, in the agency's discretion, include any one or more of the following rights, which shall be enforceable by suit, action, or proceeding in any court of competent jurisdiction:

(1) The right to cause possession of any housing development or any part thereof to be surrendered to an obligee;

(2) The right to obtain the appointment of a receiver for any housing development or part thereof and of the rents and profits therefrom. If a receiver is appointed, the receiver may enter and take possession of the housing development or any part thereof and operate and maintain it and collect and receive all fees, rents, revenue, or other charges thereafter arising therefrom and shall keep such money in separate accounts and apply them in accordance with the obligations of the housing agency as the court directs; and

(3) The right to require the housing agency to account as if it were the trustee of an express trust.

**Source:** Laws 1999, LB 105, § 48.



**71-15,120 Investments in obligations authorized.**

The state and all public agencies therein, all banks, bankers, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money or funds belonging to them or within their control in any obligations issued by a housing agency, and such obligations shall be authorized security for all public deposits. It is the purpose of the Nebraska Housing Agency Act to authorize any of such persons to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit for the purchase of any such obligations. Nothing contained in the act shall be construed as relieving any person, firm, or corporation from any duty or exercising reasonable care in selecting securities. The provisions of the act shall apply notwithstanding any restrictions on investments contained in other laws.

**Source:** Laws 1999, LB 105, § 49.

**71-15,121 Tax status of bonds and other obligations.**

(1) All bonds, notes, certificates, and other instruments evidencing indebtedness of a housing agency or any controlled affiliate thereof are deemed to be issued for an essential public and governmental purpose and shall be free of taxation of any kind by this state and its public agencies unless the agency issuing such bonds, notes, certificates, or other instruments shall elect that they be taxable. Any such election shall apply only to the specific issue of bonds, notes, certificates, or other instruments with respect to which such election is expressly made.

(2) All bonds, notes, certificates, and other instruments evidencing indebtedness or conveying equity participations issued by a local housing agency or any controlled affiliate thereof are deemed to be issued for an essential governmental purpose.

(3) A local housing agency may issue bonds, notes, certificates, or other instruments evidencing indebtedness on behalf of others to carry out any purpose authorized by the Nebraska Housing Agency Act.

**Source:** Laws 1999, LB 105, § 50.

**71-15,122 Revenue; how treated.**

The operation of housing developments and the other activities permitted to be undertaken by a local housing agency under the Nebraska Housing Agency Act, and all income, fees, or revenue derived or generated therefrom and belonging to such local housing agency, are for public uses and purposes, are not used or held for profit, and are governmental functions of state concern. No income, fees, or revenue received by a local housing agency, from whatever source, shall be used as a source of revenue for any city or county establishing the local housing agency or for any other public agency, nor shall any net income, fees, or net revenue be considered profit, but all of the same shall be utilized in the furtherance of the maintenance and enhancement of an adequate

supply of decent, safe, and sanitary housing that is affordable to persons of eligible income and for other purposes contemplated by the act.

**Source:** Laws 1999, LB 105, § 51.

**71-15,123 Establishment of rental rates.**

A local housing agency shall conduct its affairs in accordance with sound financial and business practices, taking into account the nature of its activities and intended purpose. The agency shall operate its housing developments in a manner calculated to enable the agency to fix rentals for dwelling accommodations for persons of eligible income at low rates consistent with its acting in a fiscally responsible manner and providing affordable, decent, safe, and sanitary dwelling accommodations for such persons. In this regard, a local housing agency may, in connection with establishing rents charged to persons of eligible income, take into account the sums necessary:

- (1) To pay when due all indebtedness of the agency;
- (2) To pay all administrative and other costs of operating the agency's developments and programs of assistance;
- (3) To pay the administrative and other costs of the maintenance, rehabilitation, renovation, repair, and replacement of the agency's developments and other property;
- (4) To otherwise carry out its purposes under the Nebraska Housing Agency Act, including acquiring or creating additional housing developments and acquiring or improving property for other purposes authorized under the act, including community facilities, mixed-income developments, and all other facilities and developments authorized under the act;
- (5) To pay the costs of insurance, including the costs of claims, liabilities, losses, and other expenses incurred in connection with any self-insurance program;
- (6) To provide funds for all required payments in lieu of taxes;
- (7) To make all payments required under and otherwise fully perform the agency's obligations under any contract, agreement, or arrangement entered into by the agency, including without limitation those required in connection with any partnership or joint venture entered into by the agency;
- (8) To perform the terms of any commitment or guarantee issued or given by the agency;
- (9) To provide a reasonable return on the value of the property so as to enable the housing agency to continue to fulfill its duties, including, but not limited to, the acquisition of additional housing developments, land acquisition, and the acquisition or construction of buildings, equipment, facilities, or other real or personal property for public purposes, including parks or other recreational, educational, welfare, or community facilities within its area of operation;
- (10) To accommodate economic factors which affect the financial stability and solvency of the agency's developments and programs;
- (11) To pay the cost of actions occasioned by natural disasters and other emergencies; and
- (12) To create and maintain operating and capital reserves that are reasonable and adequate to ensure the agency's ability to make all payments referred

to in this section and any other matter with respect to which the agency, in its discretion reasonably exercised, determines that the creation and maintenance of a reserve is appropriate. Nothing in this section shall be construed to limit the amount which a housing agency may charge for nondwelling facilities or for dwelling facilities that are not rented to persons of eligible income.

**Source:** Laws 1999, LB 105, § 52.

**71-15,124 Mixed-income developments; restrictions; requirements.**

(1) With respect to any mixed-income development that is constructed or acquired after January 1, 2000, and is solely owned by a local housing agency, not more than sixty percent of the dwelling units in such development shall be occupied by persons who are not persons of eligible income, and no person occupying such a development shall have an income at initial occupancy which exceeds one hundred percent of the median income in the county in which the development is located. This authority is granted only if the agency has made a determination that such housing is an appropriate component for providing safe and sanitary housing for persons of eligible income.

(2) With respect to any mixed-income development that is not solely owned by a local housing agency, the proportion of the development that is intended to be affordable to persons of eligible income shall be equal to or greater than the proportion of financial resources for the development which are provided by the local housing agency. The proportion shall be determined in accordance with such reasonable method as shall be adopted by the agency. The proportion may be based upon a proportion of dwelling units, bedrooms, square footage, or any other criteria deemed reasonable and appropriate by the local housing agency. The determination of such proportion shall take into account any special benefits accruing to an agency by virtue of its status as such, including, among other things (a) the capital value of all subsidies and other assistance provided by the agency or by other public sources on behalf of the agency, (b) tax exemptions available because of the agency's participation, and (c) interest savings attributable to tax-exempt financing or to below market interest rates that are available because of the participation of the local housing agency or the presence in the development of dwelling units to be occupied by persons of eligible income.

(3) A local housing agency may determine the period during which any unit shall be designated for occupancy only by persons of eligible income. Dwelling units in a mixed-income development that are designated for occupancy by persons of eligible income need not be particular units that are permanently so designated, and the physical location of the units so designated may change from time to time.

**Source:** Laws 1999, LB 105, § 53.

**71-15,125 Income, surplus, and payments; use.**

All income, surplus, and payments received by a local housing agency, or to which such agency shall become entitled, shall be used for carrying out the purposes of the Nebraska Housing Agency Act.

**Source:** Laws 1999, LB 105, § 54.

**71-15,126 Policies and procedures; standards.**

A local housing agency shall not apply its policies, rules, procedures, criteria, requirements, and exclusions with respect to eligibility of applicants, granting assistance, or enforcing standards relating to occupancy or continuance of assistance in an arbitrary or capricious manner.

**Source:** Laws 1999, LB 105, § 55.

**71-15,127 Discretionary powers; how construed.**

Nothing contained in the Nebraska Housing Agency Act shall create, expressly or by implication, any right, claim, or cause of action in favor of anyone in connection with any failure of a housing agency to exercise any one or more of its discretionary powers.

**Source:** Laws 1999, LB 105, § 56.

**71-15,128 Noncontrolled affiliates; treatment.**

Noncontrolled affiliates of housing agencies shall not, by virtue of their affiliation with such local housing agencies, become subject to the laws of this state applicable to public agencies and their governing bodies, including, but not limited to, laws pertaining to public disclosure of records, open meetings, minimum wage rates applicable to government contracts and employees, procurement of goods and services, and laws relating to public employees.

**Source:** Laws 1999, LB 105, § 57.

**71-15,129 Financing; limitations.**

No guaranty, other recourse obligation, mortgage, or security instrument, or other recourse instrument, given or entered into by a housing agency in connection with financing the acquisition, creation, modernization, rehabilitation, or replacement of a development which exposes to foreclosure, loss, or levy any property of the housing agency other than the development being acquired, created, modernized, rehabilitated, or replaced with the proceeds of such financing, shall be given or entered into unless the agency's board of commissioners has specifically approved such action by resolution which finds that such action:

- (1) Is necessary and essential to acquiring the financing with respect to which such recourse instrument is given or entered into;
- (2) Will not unreasonably expose to loss or foreclosure property of the agency other than the development for which such financing will be used;
- (3) Is prudent and sound as required under section 71-15,130; and
- (4) Is commercially reasonable, taking into account the characteristics of the transaction in which such recourse instrument would be given and its relative benefits and potential costs to the agency.

**Source:** Laws 1999, LB 105, § 58.

**71-15,130 Financial affairs; how conducted.**

Local housing agencies shall conduct their financial affairs in a prudent and sound manner.

**Source:** Laws 1999, LB 105, § 59.

**71-15,131 Special limited fund; authorized; restrictions on use.**

Neither a housing agency nor any controlled affiliate shall lend its credit to or guarantee or be a surety for the indebtedness or performance of any noncontrolled affiliate or third party, or any other individual or entity other than another public agency of the state, except as provided in this section. The housing agency or any controlled affiliate may establish a special limited fund which shall be segregated from all other funds, assets, and properties of the housing agency or any controlled affiliate and shall be deposited separately from all other deposits of the housing agency or any controlled affiliate. The special limited fund may be funded only from the rents and revenue of the housing agency or any controlled affiliate or from contributions, grants, or donations from other public or private sources which have been designated for such purpose. Any loan of credit, guarantee, or suretyship to any individual or entity other than another public body of this state shall be limited to the amount of the special limited fund, and neither the general credit nor any other asset or property of the housing agency, any controlled affiliate, the state, or any other public agency of the state shall be liable whatsoever for any such loan of credit, guarantee, or suretyship. Any such loan of credit, guarantee, or suretyship shall only be used for the purposes of expanding the availability of affordable housing to persons of eligible income in accordance with the provisions of the Nebraska Housing Agency Act. No such loan of credit, guarantee, or suretyship shall be valid unless in writing, which writing shall state on its face the limitations contained in this section, including the nonliability of the state and all other public agencies, and the loan of credit, guarantee, or suretyship shall be also subject to such other rules and regulations as the housing agency shall prescribe.

**Source:** Laws 1999, LB 105, § 60.

#### **71-15,132 Dwelling units; occupancy eligibility.**

Except as otherwise provided in the Nebraska Housing Agency Act with respect to mixed-income developments or except as otherwise permitted by law, dwelling units in a local housing agency's developments shall be rented only to households consisting of persons of eligible income at the time of their initial occupancy of such units. Notwithstanding any other provision of law, a local housing agency may allow police officers, elected officials, and maintenance and management employees not otherwise eligible for residence to reside in dwelling units in the housing agency's developments.

**Source:** Laws 1999, LB 105, § 61.

#### **71-15,133 Plan for selection of applicants.**

Each housing agency shall adopt and promulgate fair and equitable policies establishing a plan for selection of applicants. The plan shall include standards for eligibility, procedures for prompt notification of eligibility or disqualification, and procedures for maintaining a waiting list of eligible applicants for whom vacancies are not immediately available. Eligible applicants shall be offered available vacancies as provided in such policies. Such policies and plans may, but shall not be required to, include the following:

(1) A local housing agency may deny a lease, right of occupancy, or any other assistance to any person, including the family or household of such person, if it determines that such person or any member of such person's household (a) has committed any fraud or made any material misrepresentation or omission in

connection with any application for assistance or (b) has committed any fraud or made any material misrepresentation or omission in connection with any previous application for any public assistance or in connection with any determination or redetermination of eligibility;

(2) Preferences to give priority to persons displaced by public or private action, to families of veterans and servicemen and servicewomen, to families whose members are gainfully employed, to citizens of the United States or the state, to disabled persons or elderly persons, and such other preferences, as well as priorities within each preference category, as the local housing agency deems appropriate;

(3) Occupancy standards that provide for offering available units only to families of appropriate size and such other standards relating to occupancy and tenant conduct as the local housing agency deems appropriate; and

(4) Without limiting subdivisions (1) through (3) of this section, the local housing agency may further limit the offering of available units to families of appropriate qualifications in order to comply with state or federal law or regulations or contractual agreements with governmental agencies pursuant to such law or regulations.

Nothing contained in this section shall prevent a housing agency from suspending processing of applications of persons of eligible income unlikely to be offered units within a reasonable time after initial application as determined by the agency or from requiring annual renewal of applications.

**Source:** Laws 1999, LB 105, § 62.

**71-15,134 Discrimination prohibited.**

Nothing contained in the Nebraska Housing Agency Act shall limit the ability of any local housing agency to establish and apply different criteria or requirements with respect to admissions and occupancy, to utilize different methods of establishing and charging rents, or to impose different occupancy standards (1) for different developments or portions thereof or (2) with respect to recipients of assistance in any program designed or intended to differentiate between individual recipients on the basis of their circumstances, actions, or characteristics, except that a housing agency shall not discriminate on the basis of race, national origin, or religion.

**Source:** Laws 1999, LB 105, § 63.

**71-15,135 Current occupants; how treated.**

Households which are already in occupancy or are receiving assistance but which become ineligible for occupancy or other assistance by reason of income may continue their occupancy or receipt of other assistance at the discretion of the local housing agency for such period, upon such terms and conditions, and, in the case of continued occupancy, in exchange for such rent, but not less than any applicable minimum rent, as the agency shall determine to be appropriate.

**Source:** Laws 1999, LB 105, § 64.

**71-15,136 Lease; terms and conditions.**

The local housing agency may require that each household occupying a dwelling unit enter into a lease containing such terms and conditions and for such duration as the agency reasonably deems appropriate. No tenant or lessee

of, or recipient of assistance from, a local housing agency shall have any right to the renewal of any lease, tenancy, right of occupancy, or assistance, except as expressly agreed by the agency. All members of the household who are permitted to reside in a dwelling unit must be identified in any lease of a dwelling.

**Source:** Laws 1999, LB 105, § 65.

**71-15,137 Change in household; effect.**

In the event of a change in the composition of a tenant household, the local housing agency shall have the authority to determine which member or members of the household are entitled to continued occupancy for the unexpired lease term or periodic tenancy. A local housing agency may adopt such reasonable rules and procedures governing such determinations as it deems appropriate.

**Source:** Laws 1999, LB 105, § 66.

**71-15,138 Termination of tenancy; conditions.**

Except as provided in the Nebraska Housing Agency Act, the landlord-tenant relationship, and the termination thereof, is governed by state law applicable to privately owned residential property. Without limiting such provision, a local housing agency may terminate the tenancy of a household or a resident or terminate any other assistance provided by such agency for:

(1) The commission of any fraud or any material misrepresentation or omission on the part of any recipient of assistance or member of a resident household in connection with any application for assistance or any determination or redetermination of eligibility therefor, or in connection with any investigation or determination of the local housing agency regarding compliance by the household with the terms of any lease or the agency's rules and regulations; or

(2) Any other violation of one or more provisions of any lease or agreement with the local housing agency to which a recipient of assistance or a resident is a party or any of the agency's rules or regulations duly promulgated.

**Source:** Laws 1999, LB 105, § 67.

**71-15,139 Termination of tenancy; procedure; recovery of possession of premises; when.**

(1) A housing agency may adopt and promulgate reasonable rules and regulations consistent with federal and state laws, rules, and regulations and the purposes of the Nebraska Housing Agency Act concerning the termination of tenancy. Any resident so terminated shall be sent a written notice of termination setting out the reasons for such termination, and any resident served with a notice shall be given the opportunity to contest the termination in an appropriate hearing by the housing agency. A resident may contest the termination in any suit filed by the housing agency in any court for recovery of possession of the premises.

(2) Such notice may provide that if the resident fails to (a) pay his or her rent or comply with any covenant or condition of his or her lease or the rules and regulations of such housing agency, (b) cure a violation or default thereof as specified in such notice, or (c) follow the procedure for a hearing as set forth in

the notice, all within the time or times set forth in such notice, the tenancy shall then be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this section, a housing agency may file suit against any resident for recovery of possession of the premises and may recover the same as provided by law.

(3) A housing agency may, after three days' written notice of termination and without an administrative hearing, file suit and have judgment against any resident for recovery of possession of the premises if the resident, any member of the resident's household, any guest, or any other person who is under the resident's control or who is present upon the premises with the resident's consent, engages in any drug-related or violent criminal activity on the premises, or engages in any activity that threatens the health, safety, or peaceful enjoyment of other residents or housing agency employees. Such activity shall include, but not be limited to, any of the following activities of the resident, or the activities of any other person on the premises with the consent of the resident: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat to use an illegal firearm or other weapon; or (c) possession of a controlled substance by the resident or any other person on the premises with the consent of the resident if the resident knew or should have known of the possession by such other person of a controlled substance, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner authorized to prescribe as defined in section 28-401 while acting in the course of his or her professional practice.

**Source:** Laws 1999, LB 105, § 68; Laws 2001, LB 398, § 68.

Under this section, a public housing agency has the authority to file suit for recovery of the premises if the resident engages in violent criminal activity. *Banks v. Housing Auth. of City of Omaha*, 281 Neb. 67, 795 N.W.2d 632 (2011).

#### **71-15,140 Personal property; rules and regulations.**

A housing agency may adopt and promulgate reasonable rules and regulations consistent with the purposes of the Nebraska Housing Agency Act concerning personal property of residents and other persons located in a development of the agency, and if such personal property is not removed from a dwelling unit at the time of the termination of the lease, at the time of vacation or abandonment of the dwelling unit, or at the time of the death of any resident, an agency may remove the same and store such property in a secure location at the resident's risk and expense. If possession of such personal property is not taken by the resident or other person authorized by law to take possession within fourteen days after such termination, vacation, abandonment, or death and if any storage removal charges remain unpaid, then the housing agency may, at its option, dispose of the personal property in any manner which the authority deems fit. In no case shall any employee or relative of an employee of the housing agency take ownership of such property. No resident or other person shall have any cause of action against the housing agency for such removal or disposition of such personal property.

**Source:** Laws 1999, LB 105, § 69; Laws 2018, LB304, § 2.  
Effective date July 19, 2018.

#### **71-15,141 Report; false report; penalty; audits.**



(1) Within nine months after the end of each fiscal year, each local housing agency shall prepare a report summarizing such agency's activities for the year then ended. The report shall contain financial statements depicting the financial condition of the agency, its assets and liabilities, including contingent liabilities, and the results of its operations for the year then ended. The report shall be approved by the agency's board of commissioners and signed by its chairperson.

(2) The annual report of a local housing agency shall be a public record that is available for inspection and copying by members of the general public at the offices of the local housing agency. A local housing agency shall also file its annual report with the city or county clerk promptly upon completion thereof. Regional housing agencies shall file annual reports with the appropriate officials of all participating political subdivisions.

(3) Any employee or member of the board of commissioners of a local housing agency who approves, signs, or files an annual report of an agency knowing it is materially false or misleading shall be guilty of a Class II misdemeanor.

(4) The financial statements contained in annual reports of local housing agencies with gross revenue of two hundred fifty thousand dollars or more shall be audited annually. The financial statements of agencies with gross revenue of less than two hundred fifty thousand dollars shall be audited at least biennially. A copy of each audit report shall be filed with the Auditor of Public Accounts within nine months after the end of each fiscal year in which such agency is required to file an audit report or in which an audit report of such agency is prepared. Each local housing agency audit shall be conducted in accordance with generally accepted accounting principles, except that if the agency is a recipient of federal assistance, the audit shall be conducted in accordance with any accounting principles required by the federal government.

**Source:** Laws 1999, LB 105, § 70; Laws 2003, LB 150, § 1; Laws 2018, LB304, § 3.  
Effective date July 19, 2018.

**71-15,142 Plan for location and boundaries; approval required.**

Before any local housing agency shall construct any new development for housing purposes, it shall submit to the governing body of the city or county creating such agency, as the case may be, or to the governing body of the political subdivision which has zoning jurisdiction for the site or sites of such new development, in the case of regional housing agencies, a plan indicating the general location or locations and boundaries of the proposed site or sites for any such development, which plans shall be subject to the approval of such governing body, and such governing body may, in its discretion, submit such plan to the planning department, if any, of the city or county, as the case may be, for that department's comments and recommendations.

**Source:** Laws 1999, LB 105, § 71; Laws 2018, LB304, § 4.  
Effective date July 19, 2018.

**71-15,143 Local housing agency representative; liability.**

No representative of a local housing agency shall personally be civilly or criminally liable with respect to any matter or act not directly committed or authorized by such person.

**Source:** Laws 1999, LB 105, § 72.

**71-15,144 Housing agency representative; indemnification.**

If any legal action is brought against any representative of any housing agency, whether such person is a volunteer or partly paid or fully paid, based upon the negligent error or omission of such person while in the performance of his or her lawful duties, the housing agency shall defend him or her against such action, and if final judgment is rendered against such person, the housing agency shall pay the judgment in his or her behalf and shall have no right to restitution from such person. A housing agency shall have the right to purchase insurance to indemnify itself in advance against the possibility of such loss under this section, and the insurance company shall have no right of subrogation against the person. This section shall not be construed to permit a housing agency to pay a judgment obtained against the person as a result of illegal acts committed by such person.

**Source:** Laws 1999, LB 105, § 73.

**71-15,145 Effect of local planning, zoning, sanitary, and building laws.**

(1) Except as otherwise provided in this section, all developments are subject to the planning, zoning, sanitary, and building laws applicable to the locality in which the development is located.

(2) In order to facilitate development, redevelopment, and other activities in furtherance of the purposes of the Nebraska Housing Agency Act by local housing agencies and their affiliates, a city or county may grant exceptions to the requirements of (a) zoning ordinances and other laws, resolutions, ordinances, and regulations regulating the use, development, and improvement of land or buildings, (b) laws, resolutions, ordinances, and regulations pertaining to historic buildings and structures, and (c) redevelopment plans, comprehensive plans, and other plans governing city or county land use. Any such exceptions shall not compromise essential health and safety standards. The provisions of this section shall be cumulative of, and not in limitation of, any existing laws, resolutions, ordinances, and regulations that permit variances, special exceptions, and other relief from applicable requirements relating to development and improvement of real property.

(3) With respect to matters relating to the purposes of the act, each city or county or regional planning body of the state may, in its planning processes, take into account the recommendations of local housing agencies formed by such city or county, or by the cities and counties affected by the actions of such regional planning body.

**Source:** Laws 1999, LB 105, § 74.

**71-15,146 Records; exempt from disclosure.**

Notwithstanding the provision of any other law with respect to the availability of public records for inspection, the following records of a housing agency are exempt from disclosure:

- (1) All records in the individual file of a resident, former resident, or applicant for public housing;
- (2) All records in the individual file of a resident, former resident, or applicant for public housing in the possession of any landlord or individual providing a dwelling that is in any manner administered by a housing agency;
- (3) All lists that identify residents, former residents, and applicants, except that statistical compilations are not exempt unless, by identification of location, family size, employment, or similar information, a resident, former resident, or applicant may be identified;
- (4) The addresses of any dwellings that are assisted, either directly by the action of the housing agency or as a result of the resident's selection, except that statistical compilations are not exempt unless some or all of them may be specifically identified by address as a result of such compilation;
- (5) The home address or personal telephone number of any resident, former resident, or applicant;
- (6) Communications within a housing agency or between a housing agency and other public agencies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action;
- (7) Any information in the possession of the agency concerning the criminal history or other background information pertaining to any tenant or applicant for assistance;
- (8) Information submitted to a housing agency in confidence and not otherwise required by law to be submitted, if such information should reasonably be considered confidential and the housing agency has obligated itself in good faith not to disclose the information; and
- (9) Any other material or information that is otherwise exempt from disclosure under applicable law.

**Source:** Laws 1999, LB 105, § 75.

**71-15,147 Records; disclosure permitted; when.**

A housing agency may provide any of the records described in section 71-15,146 to:

- (1) Any recipient to whom disclosure is authorized pursuant to consent by all adult individuals identified in the record which is to be so disclosed;
- (2) Such parties as the housing agency deems necessary when the agency determines that the disclosure is essential to the preservation of life, health, or safety;
- (3) Anyone as required by a court order;
- (4) A landlord or prospective landlord for purposes of enabling the landlord to determine an applicant's suitability for initial tenancy or to determine the suitability for continued tenancy of a person receiving assistance from the agency who is already in occupancy, if such information is pertinent to such suitability determination;
- (5) Any applicant, tenant, or recipient of assistance to whom such information relates, or such person's designee or legal representative; or

(6) Any city, county, state, or federal public agency as required by law or agreement.

**Source:** Laws 1999, LB 105, § 76.

**71-15,148 Individual files; examination permitted.**

Any applicant or recipient of assistance from a housing agency may examine his or her individual file or files at reasonable times and intervals.

**Source:** Laws 1999, LB 105, § 77.

**71-15,149 Conflict of interest; terms, defined.**

For purposes of sections 71-15,149 to 71-15,157:

(1) Housing agency official means any representative of a housing agency or any director, officer, or employee of a resident management corporation or other resident organization who exercises authority or carries out responsibilities in connection with the housing agency's developments or any local government official who exercises authority or carries out responsibilities in connection with the housing agency's developments, including any member of such person's immediate family, any business entity or organization in which such person holds an interest, and any business partner of such person; and

(2) Immediate family includes spouses, children, siblings, and parents and includes stepparents or stepchildren, in-laws, and half sisters or half brothers.

**Source:** Laws 1999, LB 105, § 78.

**71-15,150 Conflict of interest; prohibited acts.**

(1) Except as otherwise permitted under the provisions of sections 71-15,149 to 71-15,157, no housing agency official shall own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would:

(a) Be or appear to be in conflict with such official's duties relating to the housing agency served by or subject to the authority of such official;

(b) Secure or appear to secure unwarranted privileges or advantages for such official or others; or

(c) Prejudice or appear to prejudice such official's independence of judgment in the exercise of his or her official duties relating to the housing agency served by or subject to the authority of such official.

(2) No housing agency official shall act in an official capacity in any matter in which such official has a direct or indirect financial or personal involvement. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. No housing agency official shall use his or her public office or employment to secure financial gain to such official.

(3) Except as otherwise permitted by the provisions of sections 71-15,149 to 71-15,157, a housing agency shall not, with respect to any housing agency official, during his or her tenure or for a period of one year thereafter, either:

(a) Award or agree to award any contract to such housing agency official or other local government official;

(b) Purchase or agree to purchase any real property from such housing agency official or other local government official, or sell or agree to sell any real property to such housing agency official or other local government official;

(c) Permit any housing agency official to represent, appear, or negotiate on behalf of any other party before the housing agency's board of commissioners or with its other officials or employees;

(d) Employ any commissioner for compensation or otherwise;

(e) Employ any local government official, or any member of such official's immediate family, if such official's duties involve the exercise of authority relating to the housing agency; or

(f) Employ for compensation any member of the immediate family of a housing agency official, if such employment creates the relationship of direct supervisor or subordinate between family members or otherwise creates a real or apparent conflict of interest.

**Source:** Laws 1999, LB 105, § 79.

**71-15,151 Conflict of interest; disclosure required; when.**

If (1) a housing agency official becomes involved in an activity or, through inheritance or other involuntary cause or circumstance, acquires an interest that violates any provision of sections 71-15,149 to 71-15,157 or (2) a local government official, after becoming employed by the agency, is requested to act in an official capacity with respect to a matter affecting his or her duties as an employee of the local housing agency, such housing agency or local government official shall immediately and fully disclose in writing to the housing agency's board of commissioners the circumstances giving rise to the conflict of interest. In the case of a local government official, such disclosure shall also be made to the local government served by such official. Upon receipt of any disclosure of actual or potential conflict of interest, a housing agency shall promptly cause such disclosure to be entered in the minutes of the housing agency.

**Source:** Laws 1999, LB 105, § 80.

**71-15,152 Housing agency official; recusal; when.**

A housing agency official shall recuse himself or herself from any vote, decision, or other action and shall not directly or indirectly participate in any action or proceeding which involves an actual or potential conflict of interest as described in sections 71-15,149 to 71-15,157, including, but not limited to, any matter:

(1) With respect to which disclosure is required under section 71-15,151;

(2) Involving assistance to, the employment of, or otherwise relating to the personal status of a member of such housing agency official's immediate family;

(3) In which the agency seeks to confer or bestow a special privilege or benefit upon such housing agency official;

(4) Involving an action by the board of commissioners concerning a waiver of any provision of sections 71-15,149 to 71-15,157, which waiver would affect such housing agency official; or

(5) Involving any other action or circumstance prohibited under sections 71-15,149 to 71-15,157 or which otherwise gives rise to a real or apparent conflict of interest.

**Source:** Laws 1999, LB 105, § 81.

**71-15,153 Housing agency official; gifts; prohibited acts.**

A housing agency official shall not solicit or accept any gift, gratuity, favor, loan, contribution, service, employment, promise of future employment, or other thing of value from any present or prospective employee of the housing agency, any present or prospective contractor, subcontractor, developer, broker, real estate agent, or any other person or organization in connection with the programs, benefits, or business of the housing agency. This section shall not prohibit the acceptance of gifts from relatives or gifts of nominal value which are not given with the intent to influence a housing agency official in the conduct of his or her official duties. Housing agencies may establish standards for determining whether or not a gift is of nominal value.

**Source:** Laws 1999, LB 105, § 82.

**71-15,154 Housing agency official; improper use of information.**

No housing agency official shall use any information not generally available to the public which he or she acquires in the course of his or her public service for the purpose of securing financial gain for such official or others.

**Source:** Laws 1999, LB 105, § 83.

**71-15,155 Misconduct in office.**

Material violation of any provision of sections 71-15,149 to 71-15,157 by a housing agency official shall, unless as otherwise provided in section 71-15,157, constitute misconduct in office.

**Source:** Laws 1999, LB 105, § 84.

**71-15,156 Conflict of interest; rules authorized.**

A local housing agency may adopt rules implementing sections 71-15,149 to 71-15,157. Such rules may include the provision for such disciplinary actions in the event of violation of sections 71-15,149 to 71-15,157 as the housing agency's board of commissioners may deem appropriate.

**Source:** Laws 1999, LB 105, § 85.

**71-15,157 Conflict of interest; sections; how construed.**

(1) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit a housing agency of a city of the second class or of a village from purchasing or otherwise acquiring any goods or services from a provider of such goods or services owned in whole or in part by a housing agency official if (a) the provider is the sole source for the goods or services within the area of operation of the housing agency, (b) the cost of the goods or services does not exceed three thousand dollars in any one instance, or (c) the provider has not received more than ten thousand dollars from the housing agency in any one calendar year.

(2) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit a housing agency from entering into and performing contracts, agreements, and arrangements with any nonprofit entity or any affiliate, whether for-profit or nonprofit in character, notwithstanding that some or all of the housing agency's representatives or public officials or legislators who exercise functions or responsibilities with respect to a housing agency's developments also serve as directors or in other policymaking positions in such nonprofit entity or affiliate. Such service by housing agency representatives, public officials, or legislators is expressly permitted under the Nebraska Housing Agency Act.

(3) The provisions of sections 71-15,149 to 71-15,157 shall not apply to any general depository agreement entered into with a bank or other financial institution regulated by the federal government or to utility service for which rates are fixed by a state or local agency. The provisions of sections 71-15,149 to 71-15,157 shall not apply to prohibit any present or former tenant commissioner from acting upon housing agency business affecting residents unless such business directly involves a resident organization with respect to which such commissioner occupies a policymaking position or serves as a member of the governing board.

(4) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit service as a commissioner by the chief elected official or any member of the governing body of any city, county, or other public agency which is served by a housing agency.

**Source:** Laws 1999, LB 105, § 86; Laws 2018, LB304, § 5.  
Effective date July 19, 2018.

**71-15,158 Property and personnel; policies, rules, and procedures; bidding requirements.**

(1) Local housing agencies shall adopt policies, rules, and procedures governing the procurement of goods or services, the sale or disposition of agency property, and the management of agency personnel. Such policies, rules, and procedures shall apply to all controlled affiliates of a local housing agency unless the agency, by resolution of its board of commissioners, elects otherwise.

(2) To the extent that federal funds are involved in any procurement by a local housing agency and public bidding or other procedures and conditions are required as a condition of the acceptance of federal financial assistance, a local housing agency shall follow such federal procedures and other conditions in such procurement.

(3) Contracts or awards for housing developments which the local housing agency proposes to construct or cause to be constructed, if the estimated cost is one hundred fifty thousand dollars or more, shall be entered into or awarded only after public bidding as provided in this section. This section shall not apply to the procurement of any professional services such as that of an architect, engineer, or legal counsel.

(4) For the construction of new housing developments, the local housing agency, in its discretion, may publish a request for proposals, including a general plan for the purposes and ends to be accomplished by the new development, including, but not limited to, the total number of units desired, any units that are to be specifically designed for the elderly or the handicapped, the unit size, and any other details which the local housing agency deems

appropriate for inclusion within the proposed new development or any facilities that are pertinent thereto.

(5) The local housing agency shall advertise for public bids or proposals once a week for two consecutive weeks in a newspaper of general circulation in its area of operation. After sealed bids or proposals are received, the contract shall be awarded to the lowest and best bidder or, if the local housing agency has elected to proceed under subsection (4) of this section, in favor of the proposal that is most commensurate with the published objectives of the local housing agency and is most suitable for the purposes of the Nebraska Housing Agency Act, except that a local housing agency, if it deems it to be in its best interests or necessary or desirable to effectuate the purposes of the act or economy and efficiency in the construction and operation of such housing development, may either reject all bids or proposals and readvertise or elect not to proceed with the development.

(6) The local housing agency may adopt and promulgate rules and regulations governing the qualifications of bidders, the submission of combined bids by two or more contractors, the award and execution of the contract, security, if any, the execution and performance of the contract, the requirements for making a proposal, and any other matters which the local housing agency deems appropriate.

(7) The local housing agency may, in its discretion, insert a provision in any contract that additional work may be done or materials or supplies furnished or that work or materials may be omitted for the purpose of completing the contract in accordance with any changes, omissions, or additions in the specifications of any such contract. Nothing in this section shall be construed to limit the power of the local housing agency to carry out a project or development or any part thereof directly by the officers, agencies, and employees of the agency or by any public agency or to purchase or to acquire goods, services, materials, equipment, or property by or through any other local housing agency as provided in section 71-15,160 or by any other public agency provided in section 71-15,161. The local housing agency may, in its discretion, insert a provision in any contract regarding labor, including wage rates, safety, and equal employment opportunities, that the local housing agency deems necessary or desirable or as may be required by law.

**Source:** Laws 1999, LB 105, § 87; Laws 2018, LB304, § 6.  
Effective date July 19, 2018.

**71-15,159 Local housing agency; joint exercise of powers authorized.**

In addition to the cooperative action by public agencies through the formation and operation of regional housing agencies authorized under sections 71-1581 to 71-1587, any power, privilege, or authority exercised or capable of being exercised by a local housing agency of this state may be exercised and enjoyed jointly with any other housing agency or other public agency of this state having such power, privilege, or authority and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment.

**Source:** Laws 1999, LB 105, § 88.

**71-15,160 Local housing agency; joint or cooperative powers enumerated.**



(1) Any two or more local housing agencies may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes, or other obligations, and giving security therefor, or for planning, undertaking, owning, constructing, operating, or contracting with respect to a housing development or developments located within the area of operation of any one or more of the cooperating agencies. For such purpose an agency may, by resolution, authorize any other local housing agency or agencies so joining and cooperating with it to act on its behalf with respect to any or all of its powers as its agent or otherwise in the name of the agency or agencies so joining and cooperating or in its own name. Any such cooperation which involves fiscal matters, ownership of any real property, or the assumption of the functions of one local housing agency by another local housing agency shall be by written contract, agreement, or arrangement entered into by such cooperating agencies.

(2) Any local housing agency may, by resolution, authorize another local housing agency to exercise its powers within the authorizing agency's area of operation at the same time that the authorizing agency is exercising the same powers.

(3) Any local housing agency may by agreement sell, lease, or otherwise provide any other local housing agency with any goods, supplies, materials, services, equipment, or property upon such terms and for such compensation as the parties shall determine and the same may be purchased, leased, or otherwise acquired without advertisement, appraisal, or public bidding.

(4) Local housing agencies may form, join, and participate in associations, cooperatives, or other entities for the purpose of purchasing goods, supplies, materials, equipment, and services, including, but not limited to, insurance, at prices or rates that may not otherwise be available to individual local housing agencies, and all such purchases and sales may be done without advertisement, appraisal, or public bidding.

**Source:** Laws 1999, LB 105, § 89.

**71-15,161 Public agency; powers.**

For the purpose of aiding and cooperating with local housing agencies in the planning, undertaking, construction, or operation of developments providing decent, safe, and sanitary housing that is affordable to persons of eligible income, and otherwise to assist local housing agencies in carrying out any other activities that are authorized under or in furtherance of the purposes of the Nebraska Housing Agency Act, any public agency may, with or without consideration:

(1) Dedicate, sell, convey, or lease any of its property to a local housing agency;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing developments;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, parking lots, or other places which it is otherwise empowered to undertake;

(4) Plan, replan, zone, or rezone any property over which it has such authority and make exemptions from building regulations, standards, resolutions, and ordinances;

(5) Enter into contracts, agreements, or arrangements which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a local housing agency or the federal government respecting action to be taken by such public agency pursuant to any of the powers granted by the act;

(6) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing developments;

(7) Purchase or legally invest in any of the bonds, notes, obligations, or other securities of a local housing agency and exercise all of the rights of any holder of such bonds or other instruments;

(8) In connection with any public improvements made by a public agency in exercising the powers granted in this section, incur the entire expense thereof. Any sale, conveyance, lease, agreement, or arrangement provided for in this section may be made by a public agency without appraisal, public notice, advertisement, or public bidding;

(9) Make donations, grants, or loans to such local housing agency as it shall deem necessary or desirable to promote decent, safe, and sanitary housing that is affordable to persons of eligible income in this state;

(10) Enter into agreements with a local housing agency for payments to it in lieu of taxes as authorized in subsection (2) of section 71-1590;

(11) Agree or arrange that a local housing agency shall manage, operate, administer, or assist in any of the activities authorized in subdivisions (1) through (10) of this section or any program of the public agency or for which the public agency receives funds, from either a federal or state governmental source, or from any other source, whether public or private, for the purpose of providing decent, safe, and sanitary housing affordable to persons of eligible income, to provide shelter, with or without other services, to homeless persons, to remove or rehabilitate unsafe or unsound dwelling structures, or for carrying out any other purpose of the act. Such agreements and arrangements may provide such compensation to a local housing agency for its services as the parties shall determine;

(12) Purchase or lease any goods, services, materials, equipment, or property from a local housing agency for any governmental or proprietary purpose for which the public agency is authorized by law to so acquire, on such terms and for such consideration as the parties shall determine, without advertisement, appraisal, or public bidding;

(13) Allow local housing agencies to purchase or acquire goods, services, materials, equipment, or property through its purchasing agency; and

(14) Upon its own initiative and without the approval of any other public agency or governing body, waive or reduce any charge or fee, including, but not limited to, any charge or fee relating to any permit, license, approval, or environmental or other impact fee, any contribution for capital improvements, and any charge or fee for any service or benefit provided by the public agency.

**Source:** Laws 1999, LB 105, § 90.

**71-15,162 State and public agencies; powers.**

The state and all public agencies of this state are authorized to appropriate, lend credit, and make donations to local housing agencies and to agree to make such appropriations, loans, or donations upon such lawful terms and conditions as they shall from time to time deem appropriate.

**Source:** Laws 1999, LB 105, § 91.

**71-15,163 Screening of applicants; powers of public agencies.**

(1) Notwithstanding any other provision of law, all public agencies of this state, including state, city, and county law enforcement agencies, shall cooperate with local housing agencies by providing, promptly upon request, information concerning the general background, including, but not limited to, the criminal history, of applicants for assistance or recipients of assistance from local housing agencies. Any such information shall be used by local housing agencies solely for the purpose of screening applicants for suitability for tenancy or for determining continued suitability for assistance or tenancy and shall not be disclosed except in a proceeding challenging a decision by an agency to deny or terminate benefits.

(2) Any person who applies for or accepts assistance provided by a local housing agency shall, by virtue of such application for or acceptance of such assistance, be deemed to have consented to the disclosure of information by public agencies as required by this section.

**Source:** Laws 1999, LB 105, § 92.

**71-15,164 Enforcement of rights; remedies.**

(1) All rights of local housing agencies existing under law or under any contract, agreement, or arrangement with any party, including this state or any public agency thereof, shall be enforceable by action brought in the courts of this state.

(2) In connection with enforcement of any right referred to in this section, a local housing agency shall be entitled to relief which may include, without limitation, the award of monetary damages, specific performance, and mandamus and other injunctive relief.

**Source:** Laws 1999, LB 105, § 93.

**71-15,165 Claims and actions; restrictions.**

No person or entity not expressly named as a party to a contract entered into by a housing agency shall have any right of action, by virtue of the status of such person or entity as a third-party beneficiary of such contract, or otherwise based upon such contract. Any claim or action in violation of this section shall be absolutely null and void.

**Source:** Laws 1999, LB 105, § 94.

**71-15,166 Act; how construed.**

The Nebraska Housing Agency Act shall be construed liberally to effect the charitable and public purposes thereof. The enumeration of specific powers, authorities, or activities in the act shall not operate to restrict the scope of any general grant of power or authority or any description of activities contained in the act or to exclude other powers, authorities, or activities reasonably compre-

hended in such general grant which are reasonably related to carrying out the purposes of the act.

It is the purpose and intent of the act that the powers of local housing agencies be construed to afford to every agency reasonable responsibility, authority, and flexibility in carrying out the provisions of the act and to maximize the involvement of private sector entities, in cooperation with local housing agencies, in the production and operation of affordable housing. The use of the disjunctive word “or” shall be construed to mean “and” and the conjunctive word “and” shall be construed to mean “or” where such construction will result in a broader interpretation of a power. Limitations upon the powers, authorities, and activities of local agencies contained in the act shall be strictly construed.

**Source:** Laws 1999, LB 105, § 95.

**71-15,167 Conflicting provisions; how construed.**

To the extent that any provision of the Nebraska Housing Agency Act shall conflict with any provision of law not contained in the act, the act shall prevail with respect to local housing agencies. It is the intention of the Legislature that, with respect to any subject matter covered by the act, the provisions of the act shall preempt all other laws of this state with respect to the formation, powers, and operation of local housing agencies and the requirements of law applicable thereto.

**Source:** Laws 1999, LB 105, § 96.

**71-15,168 Tort claims; other claims; procedure.**

(1) All tort claims against a housing agency shall be governed by the Political Subdivisions Tort Claims Act.

(2) Every person who has any claim against a housing agency, other than a tort claim under subsection (1) of this section, shall file the same, in writing, with the executive director or other person who may be acting as the secretary of such agency. If the claim is in contract, the claim shall state the services provided or articles furnished, as the case may be, and shall show the amount charged and claimed due and unpaid, allowing all just credits. The procedures set forth in this section shall not be applicable to any claim against any agency if the agency advises the claimant in writing that the liability of the agency for such claim, if any, is covered by insurance in whole or in part.

(3) If the claimant is dissatisfied with the disposition of his or her claim, or in the event that such claim is not paid or otherwise satisfied within ninety days after such claim has been filed as provided in this section, the claimant shall request, in writing, a hearing on his or her claim before the board of commissioners of the agency. Such request shall be filed with the chairperson of the agency and shall be made within six months after the filing of the claim as provided by this section. The claimant shall be notified of the time and place of the hearing, and he or she shall have the opportunity to present evidence concerning his or her claim to the board of commissioners. The board of commissioners shall hold such hearing and shall allow, disallow, or otherwise dispose of the claim, as the case may be, with written notice to the claimant, all within six months after the filing of a written request for hearing as provided in this subsection.

(4) This section shall not apply to claims, actions, or proceedings by obligees on bonds of an agency or to claims, actions, or proceedings on notes, guarantees, or other evidences of indebtedness.

(5) The representatives of a housing agency shall not be personally liable as such on its contracts or for torts not committed or directly authorized by them.

**Source:** Laws 1999, LB 105, § 97.

**Cross References**

**Political Subdivisions Tort Claims Act**, see section 13-901.

A tort claim against a housing agency is subject to the Political Subdivisions Tort Claims Act regardless of whether it is covered by liability insurance. *Harris v. Omaha Housing Auth.*, 269 Neb. 981, 698 N.W.2d 58 (2005).

**ARTICLE 16**

**LOCAL HEALTH SERVICES**

**Cross References**

**County medical facilities**, bonds, see section 23-3501 et seq.

**Delegated dispensing permit**, public health clinics, see sections 38-2881 to 38-2889.

**Disease prevention**, see section 71-501 et seq.

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

**Hospital Authorities Act**, see section 23-3579.

**Hospital districts**, see section 23-3573 et seq.

**Nebraska Budget Act**, see section 13-501.

**Nebraska Local Hospital District Act**, see section 23-3528.

**Tuberculosis Detection and Prevention Act**, see section 71-3601.01.

**Vital Statistics Act**, see section 71-601.

(a) HEALTH DISTRICTS IN COUNTIES HAVING  
A POPULATION OF MORE THAN 200,000

Section	
71-1601.	Public health; counties over 200,000; regulation by single governmental subdivision.
71-1602.	Health district; territorial limits; how designated.
71-1603.	Health district; powers.
71-1604.	Health district; creation; petition; election.
71-1605.	Health district; election; laws applicable.
71-1606.	Health district; election; Governor's proclamation; filing.
71-1607.	Health district; board of health; members; term; vacancy.
71-1608.	Health district; political subdivision deemed fully compensated; when.
71-1609.	Board of health; meetings; officers; compensation.
71-1610.	Health district; treasurer; duties; bond.
71-1611.	Board of health; estimate of expenses; budget; tax authorized.
71-1612.	Board of health; powers and duties.
71-1613.	Violations; penalty.
71-1614.	Health service obtained by ineligible person; reimbursement.
71-1615.	Special health service; duty of district to provide; cost; how paid.
71-1616.	Board of Health; department or division; director; qualifications; powers and duties.
71-1617.	Rules and regulations; standards.
71-1618.	Health district; property of county; possession; when.
71-1619.	Foods, drinks, properties; inspection; fees.
71-1620.	Preexisting health regulations; effect.
71-1621.	Epidemics or disasters; tax limitation inapplicable.
71-1622.	Health district; bonds; optional payment; interest.
71-1623.	Health district; additional powers.
71-1624.	Health district; dissolution; property; reversion.
71-1625.	Governmental subdivision, defined.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

71-1626.	Terms, defined.
71-1626.01.	Legislative intent.

**§ 71-1601****PUBLIC HEALTH AND WELFARE**

## Section

- 71-1627. Local public health department; health director; other personnel.  
 71-1628. County board; powers.  
 71-1628.01. County or district health department; termination; procedure.  
 71-1628.02. Repealed. Laws 2003, LB 412, § 12.  
 71-1628.03. Repealed. Laws 2003, LB 412, § 12.  
 71-1628.04. Core public health functions; contract authorized.  
 71-1628.05. Report.  
 71-1628.06. Core public health functions; personnel.  
 71-1628.07. Satellite office of minority health; duties.  
 71-1628.08. County Public Health Aid Program; created; funds; distribution.  
 71-1629. County or city-county health department; county board; powers; tax; election; when required.  
 71-1629.01. District health department; county board; levy; limitation.  
 71-1629.02. Municipalities; powers; levy.  
 71-1630. Local boards of health; membership; terms; vacancies; duties.  
 71-1630.01. Repealed. Laws 1979, LB 198, § 4.  
 71-1630.02. Repealed. Laws 1979, LB 198, § 4.  
 71-1630.03. Repealed. Laws 1979, LB 198, § 4.  
 71-1631. Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.  
 71-1631.01. Local boards of health; rules and regulations; violations; penalty.  
 71-1631.02. Local boards of health; retirement plan; reports.  
 71-1632. Health director; powers; duties.  
 71-1633. Local boards of health; records required.  
 71-1634. Health department; funds; how disbursed.  
 71-1635. Health department; establishment; other health agencies abolished; exception; city-county health department; control by department.  
 71-1636. Sections not applicable to school district; exception.
- (c) COMMUNITY AND HOME HEALTH SERVICES
- 71-1637. Political subdivision; employment and contracts authorized; duties; tax to support; limitation; section, how construed.  
 71-1638. Political subdivision; tax levy; limitation; election; procedure.  
 71-1639. Political subdivision; tax levy; resubmission; procedure.

(a) HEALTH DISTRICTS IN COUNTIES HAVING  
 A POPULATION OF MORE THAN 200,000

**71-1601 Public health; counties over 200,000; regulation by single governmental subdivision.**

The people in any county having a population of more than two hundred thousand inhabitants may consolidate in the hands of one governmental subdivision the regulation of public health and the remedial care and treatment of the indigent sick people, instead of having each of the several governmental subdivisions, that may be existing therein, separately perform such functions; and they may declare that the regulation of public health as well as the remedial care and treatment of the indigent sick people are for the general welfare of all the people of the state.

**Source:** Laws 1939, c. 92, § 1, p. 398; C.S.Supp., 1941, § 71-3601; R.S. 1943, § 71-1601.

**Cross References**

County medical facilities, see section 23-3501 et seq.

**71-1602 Health district; territorial limits; how designated.**

The territory within and coextensive with any county having a population of two hundred thousand inhabitants or more may become, as hereinafter provided-

ed, a health district and shall be legally described as Nebraska Health District No. . . . .

**Source:** Laws 1939, c. 92, § 2, p. 398; C.S.Supp.,1941, § 71-3602; R.S. 1943, § 71-1602.

**71-1603 Health district; powers.**

Each health district formed pursuant to sections 71-1601 to 71-1625 shall be a body corporate. It may sue and be sued, purchase, own, hold and lease real and personal property reasonably adapted for use in performing its functions. In addition to all powers expressly herein conferred, such district shall possess such additional powers as may be reasonably necessary for it to efficiently and economically perform the purposes for which it has been created.

**Source:** Laws 1939, c. 92, § 3, p. 398; C.S.Supp.,1941, § 71-3603; R.S. 1943, § 71-1603.

**71-1604 Health district; creation; petition; election.**

In the event qualified voters, within any county having a population of more than two hundred thousand inhabitants, equal in number to ten percent or more of those voting for the office of Governor at the last preceding election, present to the board of such county a petition praying for the establishment of a health district within and coextensive with such county, it shall be the duty of such county board to submit the question to a vote of the people. Such question may be submitted at either a special election or a general election but must be submitted within ninety days from the filing with the board of the petition herein described. In the event of litigation, either to prevent submission of the question to the people or to compel the county board to call an election, the court hearing the question shall fix the date of the election, if it decides an election shall be held, and said date so fixed shall not be more than ninety days after such court order becomes final.

**Source:** Laws 1939, c. 92, § 4, p. 398; C.S.Supp.,1941, § 71-3604; R.S. 1943, § 71-1604.

**71-1605 Health district; election; laws applicable.**

Such election shall be called and conducted as now provided by law for special elections. The ballot shall provide for a vote for or against the proposed health district. The notice of election shall contain a brief description, in not more than two hundred words, of the proposed changes, specifying that the existing property be turned over to the health district by the creation thereof.

**Source:** Laws 1939, c. 92, § 5, p. 399; C.S.Supp.,1941, § 71-3605; R.S. 1943, § 71-1605.

**71-1606 Health district; election; Governor's proclamation; filing.**

Upon the canvass of the election returns, the election officials shall certify the returns to the Governor. If a majority of the votes cast shall have been in favor of establishing the proposed health district, then the Governor shall issue a proclamation to that effect. The health districts shall be numbered consecutively by the Governor. The proclamation of the Governor declaring that the health district has been established shall contain a description of the real estate

transferred, and a copy shall be filed by the board he creates with the register of deeds in the county.

**Source:** Laws 1939, c. 92, § 6, p. 399; C.S.Supp.,1941, § 71-3606; R.S. 1943, § 71-1606.

**71-1607 Health district; board of health; members; term; vacancy.**

The business of each health district shall be managed by a board of five citizens. The term of office of the board members, except as herein otherwise provided, shall begin and end as provided by law for county officers. The first board shall be chosen at the election in which the health district is created. Any resident citizen may file as a candidate for the proposed board any time between the filing of the petition for the establishment of the board and ten days prior to the election thereon. The election officers shall canvass the votes for candidates at the same time the vote is canvassed for the creation of the district, and shall certify to the Governor the five individuals receiving the highest number of votes. At the same time the Governor proclaims the establishment of the health district, he shall proclaim said individuals as the governing board thereof. The term of the two individuals receiving the least votes shall end following the first general county election thereafter; the term of the two individuals receiving the next higher votes shall end following the second general county election thereafter; and the term of the individual receiving the highest vote shall end following the third general county election thereafter. A successor shall be elected for each member for a term of six years. Such successor shall be nominated and elected in the same manner as county officers on the nonpolitical ballot are chosen. Each board member shall continue in office until his successor is elected and qualified. Each member of the board shall qualify by filing an acceptance with the county clerk of the county in which he or she resides. In case of vacancy for any cause, a majority of the remaining members shall select a successor for the term, or the remainder of the term.

**Source:** Laws 1939, c. 92, § 6, p. 399; C.S.Supp.,1941, § 71-3606; R.S. 1943, § 71-1607.

**71-1608 Health district; political subdivision deemed fully compensated; when.**

Each governmental subdivision shall be deemed fully compensated for all real or personal property, possession of which has been turned over to the health district, and for all expense incurred in the organization of the health district, by the assumption and performance by the health district of the duties and obligations of such governmental subdivision in regard to public health and the remedial care and treatment of the indigent sick people.

**Source:** Laws 1939, c. 92, § 7, p. 400; C.S.Supp.,1941, § 71-3607; R.S. 1943, § 71-1608.

**71-1609 Board of health; meetings; officers; compensation.**

The board of health shall arrange for a permanent meeting place and hold at least one regular meeting each month. The board shall elect a president and vice president annually, and may also elect from outside their membership, a secretary and such other officers and employees as they may deem necessary for the administration of the affairs of the district, with such salary as the board



shall direct. The members of the board shall be reimbursed for their necessary expense in performing their duties.

**Source:** Laws 1939, c. 92, § 8, p. 400; C.S.Supp.,1941, § 71-3608; R.S. 1943, § 71-1609.

**71-1610 Health district; treasurer; duties; bond.**

The county treasurer of the county coextensive with such district shall be ex officio treasurer of the health district. He shall attend all meetings of the board when required to do so, shall prepare and submit in writing a monthly report of the state of its finances, and shall pay out its money only upon a warrant signed by the president, or in his absence by the vice president, and countersigned by the secretary. He shall give bond, payable to the health district, in the amount of one hundred thousand dollars. Such bond shall be signed by one or more surety companies of recognized responsibility and authorized to do business in this state. The cost of the bond shall be paid by the health district.

**Source:** Laws 1939, c. 92, § 9, p. 401; C.S.Supp.,1941, § 71-3609; R.S. 1943, § 71-1610.

**71-1611 Board of health; estimate of expenses; budget; tax authorized.**

The board of each health district organized pursuant to sections 71-1601 to 71-1625 shall annually during the month of January fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary to conduct the affairs of the district during the ensuing fiscal year. After the adoption of the budget statement, the board of such health district shall certify the amount of tax to be levied upon all the taxable property of the district as is provided in the adopted budget statement to be received from taxation. The county board is directed, authorized, and required to levy and collect such amount of tax in the same manner as other taxes are levied and collected, except that the aggregate health district tax shall not exceed in any one year four and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district.

**Source:** Laws 1939, c. 92, § 10, p. 401; C.S.Supp.,1941, § 71-3610; R.S.1943, § 71-1611; Laws 1953, c. 287, § 67, p. 969; Laws 1969, c. 145, § 40, p. 697; Laws 1979, LB 187, § 184; Laws 1992, LB 719A, § 158.

**71-1612 Board of health; powers and duties.**

The board of health shall have and exercise, subject to the statutes, the executive power and authority and shall assume the responsibility concerning public health and remedial care and treatment of the indigent sick people, now or hereafter vested by statutes or regulations in each and every governmental subdivision within the health district, and shall have the title, control and management of the property owned by such governmental subdivisions and used exclusively for such health activities. All the functions now performed by any physician, except the coroner's physician and the insanity board's physician, or nurse employed by any governmental subdivision within the district, and any and all inspectors of foods, drinks, and the sanitary condition of property, vest in the health district which may be created by the provisions of sections 71-1601 to 71-1625. The management and control of all hospitals, buildings and personal property used exclusively in the medical care and

treatment of the indigent sick people, and the segregation of those persons afflicted with infectious and contagious diseases, shall be in the said health district. The health district shall have the power and it shall be its duty to adopt measures for the control and eradication of preventable or communicable diseases, the inculcation of modern scientific methods of hygiene and sanitation, and the education of the public in matters relating to public health.

**Source:** Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1612.

**71-1613 Violations; penalty.**

Any person who shall violate any of the provisions of sections 71-1601 to 71-1625, or any rule or regulation made by the district health board, under the authority of said sections, shall be deemed guilty of a Class IV misdemeanor.

**Source:** Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1613; Laws 1977, LB 39, § 160.

**71-1614 Health service obtained by ineligible person; reimbursement.**

In the event remedial treatment or care is obtained by an individual who is in fact not indigent, or by an individual indigent where the primary legal responsibility rests upon a third party financially able to render such treatment or care, the health district shall have a right to recover the fair value of the treatment and care so rendered.

**Source:** Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1614.

**71-1615 Special health service; duty of district to provide; cost; how paid.**

In the event any political subdivision within the health district desires special remedial care or treatment for the members of such political subdivisions not given by the health district to all inhabitants of said district, it shall be the duty of the health district to furnish such service, and such governmental subdivision shall pay the health district for the cost of such special treatment or care so rendered.

**Source:** Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1615.

**71-1616 Board of health; department or division; director; qualifications; powers and duties.**

District health boards of each health district shall organize a department or division, with a director to administer the public health work and a district remedial care department or division. The director shall be a graduate of a recognized school of medicine, qualified by training and experience in public health work, and shall devote full time to his position. The director may be empowered to act for the board in public health matters and to supervise the division of remedial care and treatment of the indigent sick people.

**Source:** Laws 1939, c. 92, § 12, p. 402; C.S.Supp.,1941, § 71-3612; R.S.1943, § 71-1616.

**71-1617 Rules and regulations; standards.**

In formulating rules, regulations, or other orders for the establishment of a health district or the carrying out of the purpose of sections 71-1601 to 71-1625 or for the management or control of any property which may come under the care or management of the board, the board and the director selected pursuant to section 71-1616 shall conform at least to the minimum requirements, rules, and regulations of the Department of Health and Human Services and the principles of public health and sanitation and the remedial care and treatment of the indigent sick people recognized by the medical profession.

**Source:** Laws 1939, c. 92, § 13, p. 403; C.S.Supp.,1941, § 71-3613; R.S.1943, § 71-1617; Laws 1996, LB 1044, § 567; Laws 2007, LB296, § 474.

**71-1618 Health district; property of county; possession; when.**

Any health district, organized pursuant to the provisions of sections 71-1601 to 71-1625, shall not actually take possession of the properties provided for until the first day of the fiscal year of the county in which it is organized during which a tax levy has actually been made for the support of such district.

**Source:** Laws 1939, c. 92, § 14, p. 403; C.S.Supp.,1941, § 71-3614; R.S.1943, § 71-1618.

**71-1619 Foods, drinks, properties; inspection; fees.**

Any health district, organized pursuant to the provisions of sections 71-1601 to 71-1625 in providing for the inspection of foods, drinks and properties within the district, may impose upon the owners or possessors of such food, drinks or properties, a reasonable fee to cover the cost of such district of all inspection necessary to reasonably safeguard the public health.

**Source:** Laws 1939, c. 92, § 15, p. 403; C.S.Supp.,1941, § 71-3615; R.S.1943, § 71-1619.

**71-1620 Preexisting health regulations; effect.**

All measures that have been enacted by any governmental subdivision to effect any of the functions conferred upon a health district by sections 71-1601 to 71-1625 shall remain in full force and effect until a measure covering the same subject matter shall have been adopted by the board of the health district. Upon the adoption of such a measure, preexisting regulations shall become and be inoperative until dissolution of the health district.

**Source:** Laws 1939, c. 92, § 16, p. 403; C.S.Supp.,1941, § 71-3616; R.S.1943, § 71-1620.

**71-1621 Epidemics or disasters; tax limitation inapplicable.**

The limitation provided by section 71-1611 as to the amount of levy which may be certified to the county board, shall not apply to emergency expenditures and obligations to abate or control an extreme outbreak or epidemic of disease or the occurrence of some disaster affecting the public health in the health district. The existence of such an emergency may be conclusively established by joint resolutions declaring such an emergency by the county board and the health board, or by the Governor of the state and the health board.

**Source:** Laws 1939, c. 92, § 17, p. 403; C.S.Supp.,1941, § 71-3617; R.S.1943, § 71-1621.

**71-1622 Health district; bonds; optional payment; interest.**

Any health district organized pursuant to sections 71-1601 to 71-1625 may not borrow money and issue bonds therefor unless the issuance of the bonds has been submitted to the vote of the people of the district at a regular or special election and has been approved by a majority of the electors voting on the proposition, or an emergency has been declared, as provided in section 71-1621, and their issuance has been approved by the county board, in addition to the health board. In the event either of these two conditions has been met and bonds are issued, they shall not run for longer than fifteen years, shall bear interest, and shall provide for optional payment in whole or in part on or after five years from the date of issuance thereof.

**Source:** Laws 1939, c. 92, § 18, p. 404; C.S.Supp.,1941, § 71-3618; R.S.1943, § 71-1622; Laws 1947, c. 15, § 18, p. 93; Laws 1969, c. 51, § 119, p. 346.

**71-1623 Health district; additional powers.**

Sections 71-1601 to 71-1625 shall vest in each health district the powers heretofore granted to other governmental subdivisions by all acts covering the same subject matter, and particularly by the pertinent parts of subdivisions (3) and (28) of section 14-102 and sections 14-101, 14-103, 14-219, 14-501, 15-201, 15-235, 15-236, 15-237, 16-201, 16-231, 16-238, 16-239, 16-308, 17-114, 17-121, 17-122, 17-207, 17-208, 18-1901, 19-501, 23-104, 23-105, 68-104, 68-114, 71-501, 71-503, and 79-526. It is not intended to repeal nor to amend any of the statutes listed in this section or any portion of them, but to suspend the exercise of the powers therein granted during the period that a health district is actually functioning so far as any governmental subdivision is concerned that may be within the county containing such health district.

**Source:** Laws 1939, c. 92, § 19, p. 404; C.S.Supp.,1941, § 71-3619; R.S.1943, § 71-1623; Laws 1996, LB 900, § 1057.

**71-1624 Health district; dissolution; property; reversion.**

Upon the dissolution of any health district, real or personal property in its possession, originally obtained from any governmental subdivision, shall revert to such governmental subdivision. All other property shall revert to the county in which such health district has existed.

**Source:** Laws 1939, c. 92, § 20, p. 404; C.S.Supp.,1941, § 71-3620; R.S.1943, § 71-1624.

**71-1625 Governmental subdivision, defined.**

The term governmental subdivision as used in sections 71-1601 to 71-1624 shall be defined to mean any county, city, village, school district, metropolitan utilities district, or any other subdivision of the state, which receives any revenue raised by taxation.

**Source:** Laws 1939, c. 92, § 22, p. 405; C.S.Supp.,1941, § 71-3622; R.S.1943, § 71-1625.

## (b) LOCAL PUBLIC HEALTH DEPARTMENTS

**71-1626 Terms, defined.**

For purposes of sections 71-1626 to 71-1636:

(1) Core public health functions means assessment, policy development, and assurance designed to protect and improve the health of persons within a geographically defined community by (a) emphasizing services to prevent illness, disease, and disability, (b) promoting effective coordination and use of community resources, and (c) extending health services into the community, including public health nursing, disease prevention and control, public health education, and environmental health services;

(2) County, district, or city-county health department means a governmental entity approved by the Department of Health and Human Services as a local full-time public health service which (a) utilizes local, state, federal, and other funds or any combination thereof, (b) employs qualified public health medical, nursing, environmental health, health education, and other essential personnel who work under the direction and supervision of a full-time qualified medical director or of a full-time qualified lay administrator and are assisted at least part time by at least one medical consultant who shall be a licensed physician, and (c) is operated in conformity with the rules, regulations, and policies of the Department of Health and Human Services. The medical director or lay administrator shall be called the health director; and

(3) Local public health department means a county, district, or city-county health department.

**Source:** Laws 1943, c. 152, § 1, p. 554; R.S.1943, § 71-1626; Laws 1972, LB 1497, § 1; Laws 1994, LB 1223, § 34; Laws 1996, LB 1044, § 568; Laws 2001, LB 692, § 2; Laws 2004, LB 1005, § 62; Laws 2007, LB296, § 475.

#### **71-1626.01 Legislative intent.**

It is the intent of the Legislature that all persons residing in the State of Nebraska have access to public health services. It is the intent of the Legislature that local public health departments be established statewide and work collaboratively with local providers and community organizations in order to assure the full range of public health services as prescribed by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. The Legislature declares that each local public health department should be able to carry out core public health functions. Core public health functions include assessment and policy development, prevention of illness and disease, and assurance of services including public health nursing, health education, and environmental health services.

**Source:** Laws 2001, LB 692, § 4.

#### **71-1627 Local public health department; health director; other personnel.**

A local public health department shall have a health director at its head who is required to give his or her entire time to the duties of the office and such other necessary qualified full or part-time health officers, environmental health specialists, public health nurses, health educators, and clerical assistants as may be necessary to carry on the activities pertinent to the health department.

**Source:** Laws 1943, c. 152, § 2, p. 554; R.S.1943, § 71-1627; Laws 1972, LB 1497, § 2; Laws 1994, LB 1223, § 35; Laws 2001, LB 692, § 3.

**71-1628 County board; powers.**

The county board of any county may (1) make an agreement with the Department of Health and Human Services relative to the expenditure of local, state, federal, and other funds or any combination thereof, available for public health in such county; (2) after notice and public hearing, establish and maintain a single full-time local health department for such county and any other counties which combine for that purpose and, pursuant to such combination or agreement, such counties may cooperate with one another and the Department of Health and Human Services and may contribute to a joint fund in carrying out the purpose and intent of sections 71-1626 to 71-1636. The duration and nature of such agreement shall be evidenced by the resolutions of the county boards of such counties, and such agreement shall be submitted to and approved by the Department of Health and Human Services; or (3) cooperate with any city in the establishment and maintenance of a city-county health department as provided in section 71-1630. The duration and nature of such an agreement shall be evidenced by resolutions of the city council of the city and the county board participating, and such agreement shall be submitted to and approved by the Department of Health and Human Services. A city-county health department shall be administered as provided in the agreement between the county and the city and shall be considered a state-approved, local, full-time public health service.

**Source:** Laws 1943, c. 152, § 3, p. 554; R.S.1943, § 71-1628; Laws 1949, c. 206, § 1(1), p. 591; Laws 1972, LB 1497, § 3; Laws 1994, LB 1223, § 36; Laws 1996, LB 1044, § 569; Laws 1997, LB 185, § 1; Laws 2007, LB296, § 476.

**71-1628.01 County or district health department; termination; procedure.**

A county or district health department established under sections 71-1626 to 71-1636 may be terminated, following a public hearing, by a majority vote of the county board members for any county having a health department or of the majority of county boards having a district health department. A city-county health department may be terminated as provided by the agreement between the county and the city.

**Source:** Laws 1943, c. 152, § 3, p. 554; R.S.1943, § 71-1628; Laws 1949, c. 206, § 1(2), p. 593; Laws 1994, LB 1223, § 37; Laws 1997, LB 185, § 2.

**71-1628.02 Repealed. Laws 2003, LB 412, § 12.****71-1628.03 Repealed. Laws 2003, LB 412, § 12.****71-1628.04 Core public health functions; contract authorized.**

(1) Each local public health department shall carry out the core public health functions within its geographically defined community.

(2) Each local public health department shall include the essential elements in carrying out the core public health functions to the extent applicable within its geographically defined community and to the extent funds are available. The essential elements include, but are not limited to, (a) monitoring health status to identify community health problems, (b) diagnosing and investigating health problems and health hazards in the community, (c) informing, educating, and

empowering people about health issues, (d) mobilizing community partnerships to identify and solve health problems, (e) developing policies and rules that support individual and community health efforts, (f) enforcing laws, rules, and regulations that protect public health and the environment and ensure safety, (g) linking people to needed medical and mental health services and assuring the provision of health care when not otherwise available, (h) assuring a competent workforce within the health care industry and the public health departments, (i) evaluating effectiveness, accessibility, and quality of services within the health care industry and the public health departments, and (j) researching to gain new insights and innovative solutions to health problems.

(3) Any department or agency of the State of Nebraska may contract with a local public health department for the performance of public health administration or other functions at the discretion of and under the direction of such state department or agency.

**Source:** Laws 2001, LB 692, § 7; Laws 2004, LB 1005, § 63.

#### **71-1628.05 Report.**

Each local public health department shall prepare an annual report regarding the core public health functions carried out by the department in the prior fiscal year. The report shall be submitted to the Department of Health and Human Services by October 1. The Department of Health and Human Services shall compile the reports and submit the results electronically to the Health and Human Services Committee of the Legislature by December 1.

**Source:** Laws 2001, LB 692, § 8; Laws 2005, LB 301, § 35; Laws 2007, LB296, § 477; Laws 2012, LB782, § 111.

#### **71-1628.06 Core public health functions; personnel.**

The Department of Health and Human Services shall employ two full-time persons with expertise in the public health field to provide technical expertise in carrying out core public health functions and essential elements and coordinate the dissemination of materials to the local public health departments.

**Source:** Laws 2001, LB 692, § 9; Laws 2005, LB 301, § 36; Laws 2007, LB296, § 478.

#### **71-1628.07 Satellite office of minority health; duties.**

(1) The Department of Health and Human Services shall establish a satellite office of minority health in each congressional district to coordinate and administer state policy relating to minority health. Each office shall implement a minority health initiative in counties with a minority population of at least five percent of the total population of the county as determined by the most recent federal decennial census which shall target, but not be limited to, infant mortality, cardiovascular disease, obesity, diabetes, and asthma.

(2) Each office shall prepare an annual report regarding minority health initiatives implemented in the immediately preceding fiscal year. The report shall be submitted to the department by October 1. The department shall submit such reports electronically to the Health and Human Services Committee of the Legislature by December 1.

**Source:** Laws 2001, LB 692, § 10; Laws 2003, LB 412, § 1; Laws 2005, LB 301, § 37; Laws 2007, LB296, § 479; Laws 2012, LB782, § 112.

**71-1628.08 County Public Health Aid Program; created; funds; distribution.**

(1) The County Public Health Aid Program is created. Aid as appropriated by the Legislature from the Nebraska Health Care Cash Fund shall be distributed in each fiscal year as provided in this section.

(2) Of funds appropriated by the Legislature under subsection (1) of this section, the following amounts shall be distributed to local public health departments established under sections 71-1626 to 71-1636:

(a) One hundred thousand dollars to each local public health department established by at least three contiguous counties with a total population of at least thirty thousand and not more than fifty thousand persons;

(b) One hundred twenty-five thousand dollars to each local public health department established by a single county with a total population of more than fifty thousand and not more than one hundred thousand persons, with or without additional counties as part of the department, or by at least three contiguous counties with a total population of more than fifty thousand and not more than one hundred thousand persons; and

(c) One hundred fifty thousand dollars to each local public health department established by one or more counties with a total population of more than one hundred thousand persons.

(3) Any appropriated funds not distributed under subsection (2) of this section shall be allocated among all counties on a per capita basis as determined by the most recent federal decennial census. The funds allocated for each county shall be distributed to the local public health department which is established by such county and receiving funding under subsection (2) of this section. Any funds not distributed under this subsection shall be equally distributed among all local public health departments receiving funding under subsection (2) of this section.

(4) Funds appropriated under this section shall not be used to replace existing county funding to any local public health department. Funding for any local public health department under this section shall be reduced to offset any such replacement.

**Source:** Laws 2001, LB 692, § 11; Laws 2003, LB 412, § 2; Laws 2004, LB 1005, § 64.

**71-1629 County or city-county health department; county board; powers; tax; election; when required.**

(1) The county board of a county which has established a county or city-county health department may (a) incur the expenses necessary for the establishment and maintenance of such health department and (b) appropriate and use any unused funds in the general fund belonging to the county for the purposes set forth in sections 71-1626 to 71-1636.

(2) An annual tax to meet and pay the expenses necessary for the establishment and maintenance of a county or city-county health department may be levied and collected (a) by the county board of a county which has a population of thirty thousand inhabitants or more or (b) by the county board of a county which has a population of less than thirty thousand if the county board has put the proposition of having such a tax to the electors of the county and imposition of the tax has been approved by a majority of electors voting on the proposition. The election shall be called, proclaimed, held, conducted, and canvassed in the



manner of general or special elections held for the submission of propositions to the voters of a county as provided in sections 23-126 and 23-128.

**Source:** Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(1), p. 593; Laws 1953, c. 287, § 68, p. 970; Laws 1967, c. 449, § 1, p. 1393; Laws 1984, LB 783, § 1; Laws 1994, LB 1223, § 38.

**71-1629.01 District health department; county board; levy; limitation.**

The county boards of the counties which have established a district health department may levy and collect an annual tax of not to exceed eight-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property in such county as may be necessary to meet the expenditures of such district health department in proportion to which the population of such county bears to the entire population of such district subject to section 77-3443.

**Source:** Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(2), p. 593; Laws 1953, c. 287, § 69, p. 970; Laws 1979, LB 187, § 185; Laws 1992, LB 719A, § 159; Laws 1994, LB 1223, § 39; Laws 1996, LB 1114, § 63.

**71-1629.02 Municipalities; powers; levy.**

Municipalities located within counties which have established health departments or which join in the establishment of a city-county health department may (1) cooperate in the maintenance of such health departments as health departments for such municipalities, (2) incur the necessary expenses for their proportionate share in the establishment and maintenance of such health departments, and (3) levy and collect an annual tax to meet and pay such expenses.

**Source:** Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(3), p. 594; Laws 1953, c. 287, § 70, p. 970; Laws 1967, c. 449, § 2, p. 1393; Laws 1984, LB 783, § 2; Laws 1994, LB 1223, § 40.

**71-1630 Local boards of health; membership; terms; vacancies; duties.**

(1) When a health department has been established by the county board of a county and approved by the Department of Health and Human Services as a county health department, the county board of such county shall appoint a board of health which shall consist of the following members: (a) One member of the county board; (b) one dentist; (c) one physician; and (d) six public-spirited men or women interested in the health of the community. The physician and dentist shall each serve an initial term of three years. Three public-spirited men or women shall each serve an initial term of three years, and three public-spirited men or women shall each serve an initial term of two years. After the initial terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired term of the member whose term is being filled by such appointment. A county association or society of dentists or physicians or its managing board may submit each year to the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(2) When a district health department has been established by a joint resolution of the county boards of each county in a district health department, the county boards of such district shall meet and establish a district board of health with due consideration for a fair and equitable representation from the entire area to be served. The district board of health shall consist of the following members: (a) One member of each county board in the district, (b) at least one physician, (c) at least one dentist, and (d) one or more public-spirited men or women interested in the health of the community from each county in the district. One-third of the members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired terms. A county association or society of dentists or physicians or its managing board may submit each year to the county boards a list of three persons of recognized ability in such profession. If such a list is submitted, the county boards, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(3) Except as provided in subsection (4) of this section, when the county board of any county and the city council of any city located in such county have executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department, the city and county shall establish a city-county board of health. It shall consist of the following members selected by a majority vote of the city council and the county board, with due consideration to be given in an endeavor to secure a fair and equitable representation from the entire area to be served: (a) One representative of the county board, (b) one representative from the city council, (c) one physician, (d) one dentist, and (e) five public-spirited men or women, not employed in the health industry or in the health professions, who are interested in the health of the community. One-third of its members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a period of three years. A county association or society of dentists or physicians or its managing board may submit each year to the city council and the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the city council and the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(4)(a) When the county board of any county having a population of more than two hundred thousand inhabitants and the city council of any city located in such county have executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department on or after January 1, 1997, the city and county shall establish a city-county board of health. The board shall consist of the following members to be appointed by the mayor with the consent of the city council and county board: One representative of the county board, one representative from the city council, one physician, one dentist, and five public-spirited persons who are interested in the health of the community. Three of the members shall be appointed for terms of one year, three for terms of two years, and three for terms of three years. After the initial terms of office expire, each successor member shall be appointed for a term of three years. The physician and dentist members shall be appointed as provided in this subdivision. The mayor shall

invite the local county association or society of dentists or physicians or its managing board to timely submit to the mayor a list of three persons of recognized ability in the profession. A list is timely submitted if it is submitted within sixty days after the mayor's invitation. If the list is not timely submitted, the mayor may consider the list timely submitted at any time prior to making an appointment, otherwise the mayor shall appoint a person of recognized ability in the profession. If the list is timely submitted, the mayor shall consider the names on the list and shall either appoint one of the persons on the list or invite a list of three new names using the process provided in this subdivision.

(b) The board of health shall, immediately after appointment, meet and organize by the election of one of its own members as president and one as vice president. The board members may elect such other officers as they deem necessary and may adopt and promulgate rules for the guidance of the board which are not inconsistent with law or the agreement creating the board. If any board member resigns or ceases to meet the requirements for eligibility on the board, or if there is any other vacancy on the board, the mayor shall appoint another representative to serve for the member's unexpired term subject to consent by a majority vote of both the city council and the county board. Any appointment to fill a vacancy on the board shall be for the unexpired term of the member whose vacancy is being filled.

(c) The board of health shall have the following duties:

(i) Assessment of community health status and available resources for health matters, including collecting and analyzing relevant data and annually reporting and making recommendations on improving public health matters to the mayor, city council, and county board;

(ii) Policy development for proposals before the board of health, the city council, and the county board to support and improve public health, including appointing, with the approval of the mayor, city council, and county board, advisory committees to the board of health to facilitate community development functions and coalition building related to public health and adopting and approving official health department policies consistent with applicable law and approved by the affirmative vote of not less than five board members at a regular meeting of the board in the following areas:

(A) Community health services and health promotion and outreach, specifically including policies related to the following:

(I) Client services and fees;

(II) Standing orders, supervision, screening, and emergency and referral protocols and procedures;

(III) Monitoring and reporting; and

(IV) Communicable disease investigation, immunization, vaccination, testing, and prevention measures, including measures to arrest the progress of communicable diseases;

(B) Environmental health, specifically including policies related to the following:

(I) Permitting, inspection, and enforcement;

(II) Monitoring, sampling, and reporting;

(III) Technical assistance and plan review; and

(IV) Prevention measures;

(C) Investigating and controlling diseases and injury, specifically including policies related to the following:

- (I) Permitting, inspection, and enforcement;
- (II) Monitoring, sampling, and reporting;
- (III) Technical assistance and plan review; and
- (IV) Prevention measures; and

(D) Other health matters as may be requested by the city council or county board; and

(iii) Assurance that needed services are available through public or private sources in the community, including:

(A) Acting in an advisory capacity to review and recommend changes to ordinances, resolutions, and resource allocations before the city council or county board related to health matters;

(B) Annually reviewing and recommending changes in the proposed budget for resource allocations related to the health department as provided in the city-county agreement; and

(C) Monitoring and reviewing the enforcement of laws and regulations of the board of health, city council, and county board related to public health in the community.

(d) The mayor of the city shall appoint, with the approval of the board of health, city council, and county board, the health director of the health department. The health director shall be a member of the unclassified service of the city under the direction and supervision of the mayor. The health director shall be well-trained in public health work, but he or she need not be a graduate of an accredited medical school. If the health director is not a graduate of an accredited medical school, the health director shall be assisted at least part time by at least one medical consultant who is a licensed physician. The mayor shall submit the health department budget to the city council and county board. The mayor shall also provide budget information to the board of health with sufficient time to allow such board to consider such information. The mayor may enter into contracts and accept grants on behalf of the health department. The mayor may terminate the health director with approval of a majority vote of the city council, the county board, and the board of health. The health director shall:

- (i) Provide administrative supervision of the health department;
- (ii) Make all necessary sanitary and health investigations and inspections;
- (iii) Investigate the existence of any contagious or infectious disease and adopt measures to arrest the progress of the disease;
- (iv) Distribute free, as the local needs may require, all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or otherwise provided for public health purposes;
- (v) Give professional advice and information to school authorities and other public agencies on all matters pertaining to sanitation and public health;
- (vi) Inform the board of health when the city council or county board is considering proposals related to health matters or has otherwise requested recommendations from the board of health;

(vii) Inform the board of health of developments in the field of public health and of any need for updating or adding to or deleting from the programs of the health department; and

(viii) Perform duties and functions as otherwise provided by law.

**Source:** Laws 1943, c. 152, § 5, p. 557; R.S.1943, § 71-1630; Laws 1969, c. 151, § 3, p. 711; Laws 1971, LB 43, § 2; Laws 1972, LB 1497, § 4; Laws 1976, LB 716, § 1; Laws 1978, LB 580, § 1; Laws 1979, LB 198, § 1; Laws 1994, LB 1223, § 41; Laws 1996, LB 1044, § 570; Laws 1997, LB 185, § 3; Laws 2007, LB296, § 480.

**71-1630.01 Repealed. Laws 1979, LB 198, § 4.**

**71-1630.02 Repealed. Laws 1979, LB 198, § 4.**

**71-1630.03 Repealed. Laws 1979, LB 198, § 4.**

**71-1631 Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.**

Except as provided in subsection (4) of section 71-1630, the board of health of each county, district, or city-county health department organized under sections 71-1626 to 71-1636 shall, immediately after appointment, meet and organize by the election of one of its own members as president, one as vice president, and another as secretary and, either from its own members or otherwise, a treasurer and shall have the power set forth in this section. The board may elect such other officers as it may deem necessary and may adopt and promulgate such rules and regulations for its own guidance and for the government of such health department as may be necessary, not inconsistent with sections 71-1626 to 71-1636. The board of health shall, with the approval of the county board and the municipality, whenever a city is a party in such a city-county health department:

(1) Select the health director of such department who shall be (a) well-trained in public health work though he or she need not be a graduate of an accredited medical school, but if he or she is not such a graduate, he or she shall be assisted at least part time by at least one medical consultant who shall be a licensed physician, (b) qualified in accordance with the state personnel system, and (c) approved by the Department of Health and Human Services;

(2) Hold an annual meeting each year, at which meeting officers shall be elected for the ensuing year;

(3) Hold meetings quarterly each year;

(4) Hold special meetings upon a written request signed by two of its members and filed with the secretary;

(5) Provide suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties, with mileage to be computed at the rate provided in section 81-1176;

(6) Publish, on or soon after the second Tuesday in July of each year, in pamphlet form for free distribution, an annual report showing (a) the condition of its trust for each year, (b) the sums of money received from all sources, giving the name of any donor, (c) how all money has been expended and for what purpose, and (d) such other statistics and information with regard to the work of such health department as may be of general interest;

(7) Enact rules and regulations, subsequent to public hearing held after due public notice of such hearing by publication at least once in a newspaper having general circulation in the county or district at least ten days prior to such hearing, and enforce the same for the protection of public health and the prevention of communicable diseases within its jurisdiction, subject to the review and approval of such rules and regulations by the Department of Health and Human Services;

(8) Make all necessary sanitary and health investigations and inspections;

(9) In counties having a population of more than four hundred thousand inhabitants as determined by the most recent federal decennial census, enact rules and regulations for the protection of public health and the prevention of communicable diseases within the district, except that such rules and regulations shall have no application within the jurisdictional limits of any city of the metropolitan class and shall not be in effect until (a) thirty days after the completion of a three-week publication in a legal newspaper, (b) approved by the county attorney with his or her written approval attached thereto, and (c) filed in the office of the county clerk of such county. A county shall comply with this subsection within six months after a determination that the population has reached more than four hundred thousand inhabitants as determined by the most recent federal decennial census;

(10) Investigate the existence of any contagious or infectious disease and adopt measures, with the approval of the Department of Health and Human Services, to arrest the progress of the same;

(11) Distribute free as the local needs may require all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or purchased for public health purposes by the county board;

(12) Upon request, give professional advice and information to all city, village, and school authorities on all matters pertaining to sanitation and public health;

(13) Fix the salaries of all employees, including the health director. Such city-county health department may also establish an independent pension plan, retirement plan, or health insurance plan or, by agreement with any participating city or county, provide for the coverage of officers and employees of such city-county health department under such city or county pension plan, retirement plan, or health insurance plan. Officers and employees of a county health department shall be eligible to participate in the county pension plan, retirement plan, or health insurance plan of such county. Officers and employees of a district health department formed by two or more counties shall be eligible to participate in the county retirement plan unless the district health department establishes an independent pension plan or retirement plan for its officers or employees;

(14) Establish fees for the costs of all services, including those services for which third-party payment is available; and

(15) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, implement and enforce an air pollution control program under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of

air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

**Source:** Laws 1943, c. 152, § 6, p. 558; R.S.1943, § 71-1631; Laws 1953, c. 249, § 1, p. 852; Laws 1955, c. 275, § 1, p. 871; Laws 1963, c. 401, § 1, p. 1286; Laws 1967, c. 449, § 3, p. 1394; Laws 1969, c. 151, § 5, p. 713; Laws 1972, LB 1497, § 6; Laws 1973, LB 285, § 1; Laws 1979, LB 198, § 2; Laws 1981, LB 204, § 120; Laws 1992, LB 860, § 3; Laws 1992, LB 1257, § 74; Laws 1993, LB 623, § 2; Laws 1996, LB 1011, § 28; Laws 1996, LB 1044, § 571; Laws 1997, LB 185, § 4; Laws 2006, LB 1019, § 6; Laws 2007, LB296, § 481; Laws 2016, LB742, § 21.

**71-1631.01 Local boards of health; rules and regulations; violations; penalty.**

Any person violating any rule or regulation, authorized by the provisions of either subdivision (7) or (9) of section 71-1631, shall be guilty of a Class III misdemeanor, and each day's violation shall be considered a separate offense.

**Source:** Laws 1955, c. 275, § 2, p. 872; Laws 1969, c. 151, § 7, p. 717; Laws 1977, LB 39, § 161.

**71-1631.02 Local boards of health; retirement plan; reports.**

(1) Beginning December 31, 1998, through December 31, 2017, the health director of a board of health with an independent retirement plan established pursuant to section 71-1631 and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;
- (g) For each independent defined contribution plan, a full description of investment policies and options available to plan participants; and
- (h) For each independent defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

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

(2) Through December 31, 2017, if such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, a board of health with an independent

retirement plan established pursuant to section 71-1631 shall cause to be prepared an annual report and the health director shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of health does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the local public health department. All costs of the audit shall be paid by the local public health department. The report shall consist of a full actuarial analysis of each such independent retirement plan established pursuant to section 71-1631. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

(3)(a) Beginning December 31, 2018, and each December 31 thereafter, for a defined benefit plan the health director of a board of health with an independent retirement plan established pursuant to section 71-1631 and section 401(a) of the Internal Revenue Code or his or her designee shall prepare and electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee of the Legislature. If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, the report shall be in addition to the reports required by section 13-2402. The report shall be on a form prescribed by the Auditor of Public Accounts and shall include, but not be limited to, the following information:

(i) The levels of benefits of participants in the plan, the number of members who are eligible for a benefit, the total present value of such members' benefits, and the funding sources which will pay for such benefits; and

(ii) A copy of a full actuarial analysis of each such defined benefit plan. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization which offers investment advice or provides investment management services to the retirement plan.

(b) The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of health does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the board of health. All costs of the audit shall be paid by the board of health.

**Source:** Laws 1998, LB 1191, § 43; Laws 1999, LB 795, § 12; Laws 2011, LB474, § 12; Laws 2014, LB759, § 19; Laws 2017, LB415, § 23.

**71-1632 Health director; powers; duties.**



Except as provided in subsection (4) of section 71-1630, the health director of a county, district, or city-county health department shall have the power and duty to (1) be the executive officer of the local boards of health; (2) appoint, subject to any applicable county or city civil service laws, rules, or regulations, a properly functioning staff and other personnel as may be necessary, whose qualifications shall conform to the United States Public Health Standards and whose remuneration shall conform to an established compensation schedule set by such local board of health and which is reviewed and approved annually by such board; (3) review annually, with the local board of health, the proposed budget of the department; (4) organize, with the approval of the local board of health, a citizens' advisory health council that will aid in developing a public health program to meet the particular needs, hazards, and problems of the health district; and (5) organize, with the approval of the local board of health, a medical and dental advisory committee.

**Source:** Laws 1943, c. 152, § 7, p. 560; R.S.1943, § 71-1632; Laws 1969, c. 572, § 1, p. 2318; Laws 1969, c. 151, § 9, p. 717; Laws 1975, LB 139, § 2; Laws 1979, LB 198, § 3; Laws 1984, LB 783, § 3; Laws 1997, LB 185, § 5.

**71-1633 Local boards of health; records required.**

The health department of such county, district or city-county, as provided in sections 71-1626 to 71-1636, shall keep minutes of all the meetings of the health boards, and shall retain the records of everything pertaining to expenses, income, complaints, work done, meetings had, pamphlets printed and distributed, cases handled, and of any other matters pertaining to the work of the board of health.

**Source:** Laws 1943, c. 152, § 8, p. 560; R.S.1943, § 71-1633.

**71-1634 Health department; funds; how disbursed.**

(1) No funds shall be disbursed except upon vouchers approved by the director of health and the president of the board of health of a county or district health department. In the absence of the health director, the president and the vice president or, in his or her absence, the secretary are authorized to approve such vouchers before any funds are disbursed. In the absence of the president, the health director and the vice president or, in his or her absence, the secretary are authorized to approve such vouchers before any funds are disbursed. In the absence of both president and health director, the vice president and the secretary are authorized to approve such vouchers before any funds are disbursed.

(2) Funds of a city-county health department shall be disbursed as provided by the agreement between the county and the city.

**Source:** Laws 1943, c. 152, § 9, p. 560; R.S.1943, § 71-1634; Laws 1953, c. 249, § 2, p. 853; Laws 1967, c. 449, § 4, p. 1395; Laws 1997, LB 185, § 6.

**71-1635 Health department; establishment; other health agencies abolished; exception; city-county health department; control by department.**

When the county board of any county or counties creates a health department as provided by sections 71-1626 to 71-1636, every other local, municipal, or county public health agency or department, except city or county hospitals, may

be abolished, and such county or district health department may be given full control over all health matters in the county or counties, including all municipalities in the county in conformity with the rules, regulations, and policies of the Department of Health and Human Services. When a city has joined in the establishment of a city-county health department, such city-county health department may be given such control over all health matters in the city as may be provided by agreement between the county and the city with the approval of the Department of Health and Human Services. If the health department in a county or city is changed, any lawful ordinance, resolution, regulation, policy, or procedure relating to any of the functions conferred by sections 71-1626 to 71-1636 of the former health department shall remain in full force and effect until it is repealed or replaced or until it conflicts with a subsequently enacted measure.

**Source:** Laws 1943, c. 152, § 10, p. 560; R.S.1943, § 71-1635; Laws 1967, c. 449, § 5, p. 1396; Laws 1996, LB 1044, § 572; Laws 1997, LB 185, § 7; Laws 2007, LB296, § 482.

**71-1636 Sections not applicable to school district; exception.**

Sections 71-1626 to 71-1636 do not apply to any school district in the State of Nebraska, except that any school district, upon application to a county, district, or city-county health department formed under such sections, may accept in whole or in part any of the provisions of such sections, by entering into an agreement for that purpose with such health department.

**Source:** Laws 1943, c. 152, § 11, p. 560; R.S.1943, § 71-1636; Laws 2004, LB 1005, § 65.

(c) COMMUNITY AND HOME HEALTH SERVICES

**71-1637 Political subdivision; employment and contracts authorized; duties; tax to support; limitation; section, how construed.**

(1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in section 71-417 and the rules and regulations adopted and promulgated under the Health Care Facility Licensure Act. Such nurses or home health agency shall do and perform such duties as the city, village, county, or township, by their officials and electors, shall prescribe and direct. The city, village, county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the taxable valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. The levy shall be subject to sections 77-3442 and 77-3443. The city, village, county, or township shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health and Human Services, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing body, and

may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by the Health Care Facility Licensure Act, or (c) violate any rule or regulation adopted and promulgated by the Department of Health and Human Services.

**Source:** Laws 1917, c. 209, § 1, p. 514; C.S.1922, § 8234; C.S.1929, § 71-2406; R.S.1943, § 71-1701; Laws 1973, LB 483, § 1; Laws 1979, LB 187, § 186; R.S.1943, (1986), § 71-1701; Laws 1987, LB 389, § 1; Laws 1989, LB 429, § 1; Laws 1992, LB 719A, § 160; Laws 1996, LB 1044, § 573; Laws 1996, LB 1114, § 64; Laws 1996, LB 1155, § 29; Laws 1997, LB 269, § 32; Laws 1997, LB 608, § 8; Laws 1998, LB 306, § 17; Laws 2000, LB 819, § 98; Laws 2007, LB296, § 483.

**Cross References**

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

**71-1638 Political subdivision; tax levy; limitation; election; procedure.**

Whenever petitions signed by twenty-five percent of the electors of a city, county, or village shall be presented to the city council or board of supervisors, commissioners, or trustees praying for the submission of the question of making a levy to provide for salary and expenses of a visiting community nurse, a home health nurse, or a home health agency and stating the amount of the levy and the period of years in which the same shall be made, it shall be the duty of such council or board of supervisors, commissioners, or trustees to submit the question to a vote of the people at a regular or special election called for that purpose. If the question is submitted at a special election, three weeks' notice of such special election shall be given by publication in some newspaper of general circulation. Such notice shall be published three consecutive weeks if the election is in a city or village or, if in a village and no paper is published in such village, then the notice shall be posted in three of the most public places in the village. If a majority of the votes cast at such election on the question are in favor of the levy, then the regularly constituted authorities of the city, county, or village shall include the same in the estimate for expenses for each year during the period for which adopted, unless the same shall be revoked. The tax shall be levied and collected in the same manner as other taxes are levied and collected. The levy shall be subject to section 77-3443.

**Source:** Laws 1917, c. 209, § 2, p. 515; C.S.1922, § 8235; C.S.1929, § 71-2407; R.S.1943, § 71-1702; R.S.1943, (1986), § 71-1702; Laws 1987, LB 389, § 4; Laws 1996, LB 1114, § 65; Laws 1997, LB 269, § 33.

Regular election as used in this section has the same meaning as general election, and therefore a general November election is a competent time at which to submit to the voters the proposed tax levy. State ex rel. Long v. City of Nebraska City, 123 Neb. 614, 243 N.W. 858 (1932).

Writ of mandamus was denied in an action to compel the county clerk to make an additional tax levy for the expenses of a community nurse after the clerk had completed the main tax list and turned it over to the treasurer. State ex rel. Long v. Barstler, 122 Neb. 167, 240 N.W. 273 (1931).

**71-1639 Political subdivision; tax levy; resubmission; procedure.**

Whenever a petition signed by twenty-five percent of the electors, as required in section 71-1638, shall be presented to the city council, county board or

village trustees praying for the resubmission of the question of making a levy under sections 71-1637 to 71-1639, it shall be the duty of that body to resubmit the question in the same manner as provided by section 71-1638. If a majority of the votes cast at such election favor the discontinuance of such levy, the same shall be discontinued. If a majority favor its continuance, then it shall be continued for the period which has been approved by the electors at the election.

**Source:** Laws 1917, c. 209, § 3, p. 516; C.S.1922, § 8236; C.S.1929, § 71-2408; R.S.1943, § 71-1703; R.S.1943, (1986), § 71-1703.

**ARTICLE 17**

**NURSES**

**Cross References**

- Advanced Practice Registered Nurse Practice Act, see section 38-201.
- Certified Nurse Midwifery Practice Act, see section 38-601.
- Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
- Clinical Nurse Specialist Practice Act, see section 38-901.
- Community nurses, see sections 71-1637 to 71-1639.
- Division of Public Health of the Department of Health and Human Services, see section 81-3113.
- Financial assistance, loan repayment, Rural Health Systems and Professional Incentive Act, see section 71-5650.
- Health and Human Services Act, see section 81-3110.
- Health Care Facility Licensure Act, see section 71-401.
- License Suspension Act, see section 43-3301.
- Lien for services, see section 52-401.
- Medication Aide Act, see section 71-6718.
- Nebraska Center for Nursing Act, see section 71-1796.
- Nebraska Hospital-Medical Liability Act, see section 44-2855.
- Nebraska Nursing Home Act, see section 71-6037.
- Nebraska Regulation of Health Professions Act, see section 71-6201.
- Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.
- Nurse Practice Act, see section 38-2201.
- Nurse Practitioner Practice Act, see section 38-2301.
- Nursing Faculty Student Loan Act, see section 71-17,108.
- Nursing Home Administrator Practice Act, see section 38-2401.
- Nursing Student Loan Act, see section 71-17,101.
- Patient Safety Improvement Act, see section 71-8701.
- Rural Health Systems and Professional Incentive Act, see section 71-5650.
- State Board of Health, duties, see section 71-2610 et seq.
- Statewide Trauma System Act, see section 71-8201.
- Uniform Controlled Substances Act, see section 28-401.01.
- Uniform Credentialing Act, see section 38-101.

(a) COMMUNITY NURSES

- Section
- 71-1701. Transferred to section 71-1637.
- 71-1702. Transferred to section 71-1638.
- 71-1703. Transferred to section 71-1639.

(b) NURSE PRACTITIONER ACT

- 71-1704. Transferred to section 38-2301.
- 71-1705. Repealed. Laws 2005, LB 256, § 103.
- 71-1706. Transferred to section 38-2302.
- 71-1707. Transferred to section 38-2312.
- 71-1708. Transferred to section 38-2306.
- 71-1709. Repealed. Laws 1996, LB 414, § 52.
- 71-1709.01. Transferred to section 38-2307.
- 71-1709.02. Transferred to section 38-2309.
- 71-1710. Repealed. Laws 2007, LB 463, § 1319.
- 71-1711. Repealed. Laws 1996, LB 414, § 52.
- 71-1712. Transferred to section 38-2311.
- 71-1713. Repealed. Laws 1993, LB 536, § 128.
- 71-1714. Transferred to section 38-2313.
- 71-1715. Repealed. Laws 1996, LB 414, § 52.
- 71-1716. Transferred to section 38-2308.

## NURSES

### Section

- 71-1716.01. Transferred to section 38-2304.
- 71-1716.02. Transferred to section 38-2303.
- 71-1716.03. Transferred to section 38-2310.
- 71-1716.04. Repealed. Laws 1996, LB 414, § 52.
- 71-1716.05. Transferred to section 38-2314.
- 71-1717. Transferred to section 38-2305.
- 71-1718. Repealed. Laws 1993, LB 536, § 128.
- 71-1718.01. Transferred to section 71-17,134.
- 71-1718.02. Transferred to section 71-17,135.
- 71-1719. Repealed. Laws 1993, LB 536, § 128.
- 71-1720. Repealed. Laws 1993, LB 536, § 128.
- 71-1721. Transferred to section 38-2315.
- 71-1721.01. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.02. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.03. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.04. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.05. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.06. Repealed. Laws 1996, LB 414, § 52.
- 71-1721.07. Repealed. Laws 2007, LB 463, § 1319.
- 71-1722. Transferred to section 38-2317.
- 71-1723. Repealed. Laws 2007, LB 463, § 1319.
- 71-1723.01. Transferred to section 38-2321.
- 71-1723.02. Transferred to section 38-2322.
- 71-1723.03. Transferred to section 38-2323.
- 71-1723.04. Transferred to section 38-2320.
- 71-1724. Transferred to section 38-2319.
- 71-1724.01. Transferred to section 38-2318.
- 71-1724.02. Repealed. Laws 2007, LB 185, § 54.
- 71-1725. Repealed. Laws 2007, LB 185, § 54.
- 71-1725.01. Repealed. Laws 2007, LB 185, § 54.
- 71-1726. Repealed. Laws 2007, LB 185, § 54.
- 71-1726.01. Transferred to section 38-2316.
- 71-1726.02. Repealed. Laws 2007, LB 463, § 1319.
- 71-1727. Repealed. Laws 2003, LB 242, § 154.

### (c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT

- 71-1728. Transferred to section 38-701.
- 71-1729. Transferred to section 38-706.
- 71-1730. Transferred to section 38-707.
- 71-1731. Transferred to section 38-708.
- 71-1732. Repealed. Laws 1992, LB 1019, § 129.
- 71-1733. Repealed. Laws 1992, LB 1019, § 129.
- 71-1734. Transferred to section 38-711.
- 71-1735. Transferred to section 38-709.
- 71-1736. Repealed. Laws 2005, LB 256, § 103.
- 71-1736.01. Repealed. Laws 2007, LB 185, § 54.
- 71-1736.02. Repealed. Laws 2007, LB 185, § 54.
- 71-1736.03. Repealed. Laws 2007, LB 185, § 54.
- 71-1737. Repealed. Laws 2007, LB 463, § 1319.

### (d) NURSE MIDWIFERY

- 71-1738. Transferred to section 38-601.
- 71-1739. Transferred to section 38-602.
- 71-1740. Transferred to section 38-603.
- 71-1741. Repealed. Laws 1999, LB 828, § 178.
- 71-1742. Repealed. Laws 1999, LB 828, § 178.
- 71-1743. Transferred to section 38-605.
- 71-1744. Repealed. Laws 2002, LB 93, § 27.
- 71-1745. Repealed. Laws 2007, LB 463, § 1319.
- 71-1746. Transferred to section 38-608.
- 71-1747. Transferred to section 38-607.

## PUBLIC HEALTH AND WELFARE

### Section

- 71-1748. Transferred to section 38-606.
- 71-1749. Transferred to section 38-604.
- 71-1750. Transferred to section 38-609.
- 71-1751. Transferred to section 38-610.
- 71-1752. Transferred to section 38-611.
- 71-1753. Transferred to section 38-613.
- 71-1754. Transferred to section 38-614.
- 71-1755. Transferred to section 38-615.
- 71-1756. Transferred to section 38-617.
- 71-1757. Transferred to section 38-616.
- 71-1758. Repealed. Laws 2007, LB 185, § 54.
- 71-1759. Repealed. Laws 2002, LB 93, § 27.
- 71-1760. Repealed. Laws 2003, LB 242, § 154.
- 71-1761. Repealed. Laws 2007, LB 185, § 54.
- 71-1762. Repealed. Laws 2007, LB 185, § 54.
- 71-1763. Transferred to section 38-618.
- 71-1764. Repealed. Laws 2007, LB 463, § 1319.
- 71-1765. Transferred to section 38-612.

### (e) NURSING INCENTIVES

- 71-1766. Repealed. Laws 1997, LB 622, § 136.
- 71-1767. Repealed. Laws 1997, LB 622, § 136.
- 71-1768. Repealed. Laws 1997, LB 622, § 136.
- 71-1769. Repealed. Laws 1997, LB 622, § 136.
- 71-1770. Repealed. Laws 1997, LB 622, § 136.
- 71-1771. Repealed. Laws 1997, LB 622, § 136.

### (f) LICENSED PRACTICAL NURSE-CERTIFIED

- 71-1772. Transferred to section 38-1601.
- 71-1773. Transferred to section 38-1602.
- 71-1774. Repealed. Laws 2007, LB 463, § 1319.
- 71-1775. Transferred to section 38-1621.
- 71-1776. Transferred to section 38-1613.
- 71-1777. Transferred to section 38-1615.
- 71-1778. Transferred to section 38-1616.
- 71-1779. Transferred to section 38-1617.
- 71-1780. Transferred to section 38-1622.
- 71-1781. Transferred to section 38-1623.
- 71-1782. Repealed. Laws 2007, LB 463, § 1319.
- 71-1783. Transferred to section 38-1624.
- 71-1784. Repealed. Laws 2007, LB 463, § 1319.
- 71-1785. Transferred to section 38-1625.
- 71-1786. Repealed. Laws 2003, LB 242, § 154.
- 71-1787. Repealed. Laws 2007, LB 463, § 1319.
- 71-1788. Repealed. Laws 2007, LB 463, § 1319.
- 71-1789. Transferred to section 38-1614.
- 71-1790. Transferred to section 38-1620.
- 71-1791. Repealed. Laws 2007, LB 463, § 1319.
- 71-1792. Transferred to section 38-1618.
- 71-1793. Repealed. Laws 2007, LB 463, § 1319.
- 71-1794. Repealed. Laws 2007, LB 463, § 1319.

### (g) NURSE LICENSURE COMPACT

- 71-1795. Nurse Licensure Compact.
- 71-1795.01. Nurse Licensure Compact.
- 71-1795.02. Termination of prior compact.

### (h) NEBRASKA CENTER FOR NURSING ACT

- 71-1796. Act, how cited.
- 71-1797. Legislative findings.
- 71-1798. Nebraska Center for Nursing; established; goals.
- 71-1798.01. Board of Nursing; duties.

**NURSES**

**§ 71-1703**

Section  
71-1799. Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses.

71-17,100. Repealed. Laws 2010, LB 849, § 41.

(i) NURSING STUDENT LOAN ACT

71-17,101. Act, how cited.

71-17,102. Terms, defined.

71-17,103. Department; duties.

71-17,104. Student loan; eligibility.

71-17,105. Loans; restrictions; repayment; when.

71-17,106. Rules and regulations.

71-17,107. Nursing Student Loan Cash Fund; created; use; investment.

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,108. Act, how cited.

71-17,109. Terms, defined.

71-17,110. Loan; eligibility.

71-17,111. Loan distribution; conditions.

71-17,112. Nursing Faculty Student Loan Cash Fund; created; use; investment.

71-17,113. License renewal; extra fee.

71-17,114. Department; powers and duties.

71-17,115. Report required.

71-17,116. Rules and regulations.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

71-17,117. Transferred to section 38-901.

71-17,118. Transferred to section 38-903.

71-17,119. Transferred to section 38-908.

71-17,120. Transferred to section 38-906.

71-17,121. Transferred to section 38-910.

71-17,122. Repealed. Laws 2007, LB 463, § 1319.

71-17,123. Repealed. Laws 2007, LB 463, § 1319.

71-17,124. Repealed. Laws 2007, LB 463, § 1319.

71-17,125. Repealed. Laws 2007, LB 185, § 54.

71-17,126. Repealed. Laws 2007, LB 185, § 54.

71-17,127. Repealed. Laws 2007, LB 185, § 54.

71-17,128. Transferred to section 38-907.

71-17,129. Repealed. Laws 2007, LB 463, § 1319.

71-17,130. Repealed. Laws 2007, LB 463, § 1319.

(l) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

71-17,131. Transferred to section 38-201.

71-17,132. Transferred to section 38-202.

71-17,133. Transferred to section 38-203.

71-17,134. Transferred to section 38-205.

71-17,135. Transferred to section 38-206.

71-17,136. Transferred to section 38-207.

71-17,137. Transferred to section 38-208.

71-17,138. Transferred to section 38-209.

71-17,139. Repealed. Laws 2007, LB 463, § 1319.

71-17,140. Transferred to section 38-210.

71-17,141. Repealed. Laws 2007, LB 463, § 1319.

(a) COMMUNITY NURSES

**71-1701 Transferred to section 71-1637.**

**71-1702 Transferred to section 71-1638.**

**71-1703 Transferred to section 71-1639.**

(b) NURSE PRACTITIONER ACT

- 71-1704 Transferred to section 38-2301.
- 71-1705 Repealed. Laws 2005, LB 256, § 103.
- 71-1706 Transferred to section 38-2302.
- 71-1707 Transferred to section 38-2312.
- 71-1708 Transferred to section 38-2306.
- 71-1709 Repealed. Laws 1996, LB 414, § 52.
- 71-1709.01 Transferred to section 38-2307.
- 71-1709.02 Transferred to section 38-2309.
- 71-1710 Repealed. Laws 2007, LB 463, § 1319.
- 71-1711 Repealed. Laws 1996, LB 414, § 52.
- 71-1712 Transferred to section 38-2311.
- 71-1713 Repealed. Laws 1993, LB 536, § 128.
- 71-1714 Transferred to section 38-2313.
- 71-1715 Repealed. Laws 1996, LB 414, § 52.
- 71-1716 Transferred to section 38-2308.
- 71-1716.01 Transferred to section 38-2304.
- 71-1716.02 Transferred to section 38-2303.
- 71-1716.03 Transferred to section 38-2310.
- 71-1716.04 Repealed. Laws 1996, LB 414, § 52.
- 71-1716.05 Transferred to section 38-2314.
- 71-1717 Transferred to section 38-2305.
- 71-1718 Repealed. Laws 1993, LB 536, § 128.
- 71-1718.01 Transferred to section 71-17,134.
- 71-1718.02 Transferred to section 71-17,135.
- 71-1719 Repealed. Laws 1993, LB 536, § 128.
- 71-1720 Repealed. Laws 1993, LB 536, § 128.
- 71-1721 Transferred to section 38-2315.
- 71-1721.01 Repealed. Laws 1996, LB 414, § 52.
- 71-1721.02 Repealed. Laws 1996, LB 414, § 52.
- 71-1721.03 Repealed. Laws 1996, LB 414, § 52.



- 71-1721.04 Repealed. Laws 1996, LB 414, § 52.
- 71-1721.05 Repealed. Laws 1996, LB 414, § 52.
- 71-1721.06 Repealed. Laws 1996, LB 414, § 52.
- 71-1721.07 Repealed. Laws 2007, LB 463, § 1319.
- 71-1722 Transferred to section 38-2317.
- 71-1723 Repealed. Laws 2007, LB 463, § 1319.
- 71-1723.01 Transferred to section 38-2321.
- 71-1723.02 Transferred to section 38-2322.
- 71-1723.03 Transferred to section 38-2323.
- 71-1723.04 Transferred to section 38-2320.
- 71-1724 Transferred to section 38-2319.
- 71-1724.01 Transferred to section 38-2318.
- 71-1724.02 Repealed. Laws 2007, LB 185, § 54.
- 71-1725 Repealed. Laws 2007, LB 185, § 54.
- 71-1725.01 Repealed. Laws 2007, LB 185, § 54.
- 71-1726 Repealed. Laws 2007, LB 185, § 54.
- 71-1726.01 Transferred to section 38-2316.
- 71-1726.02 Repealed. Laws 2007, LB 463, § 1319.
- 71-1727 Repealed. Laws 2003, LB 242, § 154.

(c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT

- 71-1728 Transferred to section 38-701.
- 71-1729 Transferred to section 38-706.
- 71-1730 Transferred to section 38-707.
- 71-1731 Transferred to section 38-708.
- 71-1732 Repealed. Laws 1992, LB 1019, § 129.
- 71-1733 Repealed. Laws 1992, LB 1019, § 129.
- 71-1734 Transferred to section 38-711.
- 71-1735 Transferred to section 38-709.
- 71-1736 Repealed. Laws 2005, LB 256, § 103.
- 71-1736.01 Repealed. Laws 2007, LB 185, § 54.
- 71-1736.02 Repealed. Laws 2007, LB 185, § 54.

**71-1736.03 Repealed. Laws 2007, LB 185, § 54.**

**71-1737 Repealed. Laws 2007, LB 463, § 1319.**

(d) NURSE MIDWIFERY

**71-1738 Transferred to section 38-601.**

**71-1739 Transferred to section 38-602.**

**71-1740 Transferred to section 38-603.**

**71-1741 Repealed. Laws 1999, LB 828, § 178.**

**71-1742 Repealed. Laws 1999, LB 828, § 178.**

**71-1743 Transferred to section 38-605.**

**71-1744 Repealed. Laws 2002, LB 93, § 27.**

**71-1745 Repealed. Laws 2007, LB 463, § 1319.**

**71-1746 Transferred to section 38-608.**

**71-1747 Transferred to section 38-607.**

**71-1748 Transferred to section 38-606.**

**71-1749 Transferred to section 38-604.**

**71-1750 Transferred to section 38-609.**

**71-1751 Transferred to section 38-610.**

**71-1752 Transferred to section 38-611.**

**71-1753 Transferred to section 38-613.**

**71-1754 Transferred to section 38-614.**

**71-1755 Transferred to section 38-615.**

**71-1756 Transferred to section 38-617.**

**71-1757 Transferred to section 38-616.**

**71-1758 Repealed. Laws 2007, LB 185, § 54.**

**71-1759 Repealed. Laws 2002, LB 93, § 27.**

**71-1760 Repealed. Laws 2003, LB 242, § 154.**

**71-1761 Repealed. Laws 2007, LB 185, § 54.**

**71-1762 Repealed. Laws 2007, LB 185, § 54.**

**71-1763 Transferred to section 38-618.**

**71-1764 Repealed. Laws 2007, LB 463, § 1319.**

**71-1765 Transferred to section 38-612.**

## (e) NURSING INCENTIVES

- 71-1766 Repealed. Laws 1997, LB 622, § 136.
- 71-1767 Repealed. Laws 1997, LB 622, § 136.
- 71-1768 Repealed. Laws 1997, LB 622, § 136.
- 71-1769 Repealed. Laws 1997, LB 622, § 136.
- 71-1770 Repealed. Laws 1997, LB 622, § 136.
- 71-1771 Repealed. Laws 1997, LB 622, § 136.

## (f) LICENSED PRACTICAL NURSE-CERTIFIED

- 71-1772 Transferred to section 38-1601.
- 71-1773 Transferred to section 38-1602.
- 71-1774 Repealed. Laws 2007, LB 463, § 1319.
- 71-1775 Transferred to section 38-1621.
- 71-1776 Transferred to section 38-1613.
- 71-1777 Transferred to section 38-1615.
- 71-1778 Transferred to section 38-1616.
- 71-1779 Transferred to section 38-1617.
- 71-1780 Transferred to section 38-1622.
- 71-1781 Transferred to section 38-1623.
- 71-1782 Repealed. Laws 2007, LB 463, § 1319.
- 71-1783 Transferred to section 38-1624.
- 71-1784 Repealed. Laws 2007, LB 463, § 1319.
- 71-1785 Transferred to section 38-1625.
- 71-1786 Repealed. Laws 2003, LB 242, § 154.
- 71-1787 Repealed. Laws 2007, LB 463, § 1319.
- 71-1788 Repealed. Laws 2007, LB 463, § 1319.
- 71-1789 Transferred to section 38-1614.
- 71-1790 Transferred to section 38-1620.
- 71-1791 Repealed. Laws 2007, LB 463, § 1319.
- 71-1792 Transferred to section 38-1618.
- 71-1793 Repealed. Laws 2007, LB 463, § 1319.
- 71-1794 Repealed. Laws 2007, LB 463, § 1319.

## (g) NURSE LICENSURE COMPACT

**71-1795 Nurse Licensure Compact.**

The Nurse Licensure Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

## ARTICLE I. Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

## ARTICLE II. Definitions

As used in this compact:

(a) Adverse action means a home or remote state action.

(b) Alternative program means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) Coordinated licensure information system means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) Current significant investigative information means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if

required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) Home state means the party state which is the nurse's primary state of residence.

(f) Home state action means any administrative, civil, equitable, or criminal action permitted by the home state's laws which is imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) Licensing board means a party state's regulatory body responsible for issuing nurse licenses.

(h) Multistate licensure privilege means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) Nurse means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's state practice laws.

(j) Party state means any state that has adopted this compact.

(k) Remote state means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) Remote state action means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) State means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) State practice laws means those individual party states' laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. State practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

### ARTICLE III. General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a

home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

#### ARTICLE IV. Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in the primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is

not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

#### ARTICLE V. Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state action, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such report.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

#### ARTICLE VI. Additional Authorities Invested in Party

##### State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located;

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

#### ARTICLE VII. Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

#### ARTICLE VIII. Compact Administration and Interchange of Information

(a) The head of the nurse licensing board or his or her designee of each party state shall be the administrator of this compact for his or her state.



(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents, including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d).

#### ARTICLE IX. Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact shall be liable except as provided in the State Tort Claims Act.

#### ARTICLE X. Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

#### ARTICLE XI. Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in

the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute;

- (2) The decision of a majority of the arbitrators shall be final and binding.

**Source:** Laws 2000, LB 523, § 1.

Termination date: See section 71-1795.02.

**Cross References**

**State Tort Claims Act**, see section 81-8,235.

**71-1795.01 Nurse Licensure Compact.**

The State of Nebraska adopts the Nurse Licensure Compact in the form substantially as follows:

Nurse Licensure Compact

ARTICLE I

Findings and Declaration of Purpose

- a. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

- b. The general purposes of this Compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of nurse licenses; and

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II  
Definitions

As used in this Compact:

a. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

b. Alternative program means a nondisciplinary monitoring program approved by a licensing board.

c. Coordinated licensure information system means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

d. Current significant investigative information means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. Encumbrance means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

f. Home state means the party state which is the nurse's primary state of residence.

g. Licensing board means a party state's regulatory body responsible for issuing nurse licenses.

h. Multistate license means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

i. Multistate licensure privilege means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or licensed practical/vocational nurse in a remote state.

j. Nurse means a registered nurse or a licensed practical/vocational nurse, as those terms are defined by each party state's practice laws.

k. Party state means any state that has adopted this Compact.

l. Remote state means a party state, other than the home state.

m. Single-state license means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

n. State means a state, territory, or possession of the United States and the District of Columbia.

o. State practice laws means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. State practice laws do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

### ARTICLE III

#### General Provisions and Jurisdiction

a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

c. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;

2. i. Has graduated or is eligible to graduate from a licensing board-approved registered nurse or licensed practical/vocational nurse prelicensure education program; or

ii. Has graduated from a foreign registered nurse or licensed practical/vocational nurse prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

3. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

4. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints, or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

9. Is not currently enrolled in an alternative program;

10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and

11. Has a valid United States social security number.

d. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

e. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

f. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

g. Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable Article III.c. requirements to obtain a multistate license from a new home state.

2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators.

#### ARTICLE IV

##### Applications for Licensure in a Party State

a. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

b. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

c. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators.

1. The nurse may apply for licensure in advance of a change in primary state of residence.

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

d. If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

#### ARTICLE V

##### Additional Authorities Invested in Party State Licensing Boards

a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

i. Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate actions and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation

record search on criminal background checks, and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

b. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

c. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

#### ARTICLE VI

##### Coordinated Licensure Information System and Exchange of Information

a. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. The Interstate Commission of Nurse Licensure Compact Administrators, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with nonparty states or disclosed to other entities or individuals except

to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation; and
4. Other information that may facilitate the administration of this Compact, as determined by rules of the Interstate Commission of Nurse Licensure Compact Administrators.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

#### ARTICLE VII

##### Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

a. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

1. The Commission is an instrumentality of the party states.
2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

##### b. Membership, Voting, and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the Administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the Commission.



4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

- i. Noncompliance of a party state with its obligations under this Compact;
- ii. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- iii. Current, threatened, or reasonably anticipated litigation;
- iv. Negotiation of contracts for the purchase or sale of goods, services, or real estate;
- v. Accusing any person of a crime or formally censuring any person;
- vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- viii. Disclosure of investigatory records compiled for law enforcement purposes;
- ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or
- x. Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including, but not limited to:

1. Establishing the fiscal year of the Commission;
2. Providing reasonable standards and procedures:
  - i. For the establishment and meetings of other committees; and
  - ii. Governing any general or specific delegation of any authority or function of the Commission;
3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The

Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission; and

6. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations;

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the web site of the Commission.

e. The Commission shall maintain its financial records in accordance with the bylaws.

f. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including, but not limited to, sharing administrative or staff expenses, office space or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

7. To accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

9. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

10. To establish a budget and make expenditures;
11. To borrow money;
12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;
13. To provide and receive information from, and to cooperate with, law enforcement agencies;
14. To adopt and use an official seal; and
15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

h. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
2. The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.
3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense, and Indemnification

1. The administrators, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.
2. The Commission shall defend any administrator, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or

responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

#### ARTICLE VIII Rulemaking

a. The Interstate Commission of Nurse Licensure Compact Administrators shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the web site of the Commission; and
2. On the web site of each licensing board or the publication in which each state would otherwise publish proposed rules.

d. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment, and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

g. The Commission shall publish the place, time, and date of the scheduled public hearing.

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in

writing. All hearings will be recorded, and a copy will be made available upon request.

2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or party state funds; or
3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

l. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the web site of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

## ARTICLE IX

### Oversight, Dispute Resolution, and Enforcement

#### a. Oversight

1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

2. The Interstate Commission of Nurse Licensure Compact Administrators shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

#### b. Default, Technical Assistance, and Termination

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

ii. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and nonparty states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:

i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

#### ARTICLE X

##### Effective Date, Withdrawal, and Amendment

a. This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact, superseded by this Compact, (Prior Compact), shall be deemed to have withdrawn from said Prior Compact within six months after the effective date of this Compact.

b. Each party state to this Compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

c. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

d. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

e. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

f. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

g. Representatives of nonparty states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

#### ARTICLE XI

##### Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state,

this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

**Source:** Laws 2017, LB88, § 26.

**71-1795.02 Termination of prior compact.**

Section 71-1795 and the Nurse Licensure Compact contained in section 71-1795 terminate six months after the earlier of the date of legislative enactment of the Nurse Licensure Compact in section 71-1795.01 into law by no less than twenty-six states or December 31, 2018. The State of Nebraska shall be deemed to have withdrawn from the Nurse Licensure Compact in section 71-1795 at the time the compact terminates under this section.

**Source:** Laws 2017, LB88, § 27.

(h) NEBRASKA CENTER FOR NURSING ACT

**71-1796 Act, how cited.**

Sections 71-1796 to 71-1799 shall be known and may be cited as the Nebraska Center for Nursing Act.

**Source:** Laws 2000, LB 1025, § 1; Laws 2005, LB 243, § 2; Laws 2010, LB849, § 25.

**71-1797 Legislative findings.**

The Legislature finds that it is imperative that the State of Nebraska protect its investment and the progress made in its efforts to alleviate the nursing shortage which exists. The Legislature also finds that the Nebraska Center for Nursing will provide the appropriate means to do so. It is the intent of the Legislature to appropriate funds necessary for the center to carry out the Nebraska Center for Nursing Act.

**Source:** Laws 2000, LB 1025, § 2.

**71-1798 Nebraska Center for Nursing; established; goals.**

The Nebraska Center for Nursing is established. The center shall address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization of nurses. The Legislature finds that the center will repay the state's investment by providing an ongoing strategy for the allocation of the state's resources directed towards nursing. The primary goals for the center are:

(1) To develop a strategic statewide plan to alleviate the nursing shortage in Nebraska by:

(a) Establishing and maintaining a data base on nursing supply and demand in Nebraska, including current supply and demand and future projections; and

(b) Selecting priorities from the plan to be addressed;

(2) To convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:

(a) Review and comment on data analysis prepared for the center;

(b) Recommend systemic changes, including strategies for implementation of recommended changes; and



(c) Evaluate and report the results of these efforts to the Legislature and the public; and

(3) To enhance and promote recognition, reward, and renewal activities for nurses by:

(a) Proposing and creating recognition, reward, and renewal activities; and

(b) Promoting media and positive image-building efforts for nursing.

**Source:** Laws 2000, LB 1025, § 3.

**71-1798.01 Board of Nursing; duties.**

The Board of Nursing shall recommend annually to the Department of Health and Human Services the percentage of all nursing fees collected during the year that are to be used to cover the cost of the Nebraska Center for Nursing, except that the percentage shall not be greater than fifteen percent of the biennial revenue derived from the fees.

**Source:** Laws 2005, LB 243, § 3; Laws 2007, LB296, § 488.

**71-1799 Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses.**

(1) The Nebraska Center for Nursing Board is created. The board shall be a policy-setting board for the Nebraska Center for Nursing. The board shall be appointed by the Governor as follows:

(a) Ten members, at least three of whom shall be registered nurses, one of whom shall be a licensed practical nurse, one of whom shall be a representative of the hospital industry, and one of whom shall be a representative of the long-term care industry;

(b) One nurse educator recommended by the Board of Regents of the University of Nebraska;

(c) One nurse educator recommended by the Nebraska Community College Association;

(d) One nurse educator recommended by the Nebraska Association of Independent Colleges and Universities; and

(e) Three members recommended by the State Board of Health.

(2) The initial terms of the members of the Nebraska Center for Nursing Board shall be:

(a) Five of the ten members appointed under subdivision (1)(a) of this section shall serve for one year and five shall serve for two years;

(b) The member recommended by the Board of Regents shall serve for three years;

(c) The member recommended by the Nebraska Community College Association shall serve for two years;

(d) The member recommended by the Nebraska Association of Independent Colleges and Universities shall serve for one year; and

(e) The members recommended by the State Board of Health shall serve for three years.

The initial appointments shall be made within sixty days after July 13, 2000. After the initial terms expire, the terms of all of the members shall be three years with no member serving more than two consecutive terms.

(3) The Nebraska Center for Nursing Board shall have the following powers and duties:

- (a) To determine operational policy;
- (b) To elect a chairperson and officers to serve two-year terms. The chairperson and officers may not succeed themselves;
- (c) To establish committees of the board as needed;
- (d) To appoint a multidisciplinary advisory council for input and advice on policy matters;
- (e) To implement the major functions of the Nebraska Center for Nursing; and
- (f) To seek and accept nonstate funds for carrying out center policy.

(4) The board members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The Department of Health and Human Services shall provide administrative support for the board. The board may contract for additional support not provided by the department.

**Source:** Laws 2000, LB 1025, § 4; Laws 2007, LB296, § 489.

**71-17,100 Repealed. Laws 2010, LB 849, § 41.**

(i) NURSING STUDENT LOAN ACT

**71-17,101 Act, how cited.**

Sections 71-17,101 to 71-17,107 shall be known and may be cited as the Nursing Student Loan Act.

**Source:** Laws 2001, LB 468, § 1.

**71-17,102 Terms, defined.**

For purposes of the Nursing Student Loan Act:

- (1) Approved nursing program means a program offered by a public or private institution in this state (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;
- (2) Department means the Department of Health and Human Services;
- (3) Nontraditional student means a student who has not attended classes as a regular full-time student for at least three years; and
- (4) Practice of nursing has the definition found in section 38-2210.

**Source:** Laws 2001, LB 468, § 2; Laws 2007, LB296, § 490; Laws 2007, LB463, § 1191.

**71-17,103 Department; duties.**

The department shall administer a student loan program under the Nursing Student Loan Act which shall make loans directly to qualified students enrolled in approved nursing programs in the State of Nebraska as provided in section 71-17,106. The number of loans made to qualified students at each institution

which has an approved nursing program shall be in direct proportion to the number of students enrolled in each nursing program, except that the program shall include at least one qualified student at each institution in the state which has an approved nursing program. The funds shall be loaned in a manner intended to result in the greatest increase in the number of persons engaged in the study of nursing. Loans shall be made available for students beginning January 1, 2002, and in each academic year thereafter. It is the intent of the Legislature that a portion of the loans allocated be used to enhance the educational opportunities of nontraditional students and ethnic minority students.

**Source:** Laws 2001, LB 468, § 3.

**71-17,104 Student loan; eligibility.**

(1) To qualify for a loan under the Nursing Student Loan Act, a student shall be a resident of Nebraska, intend to practice in Nebraska, be motivated to practice in Nebraska, and have substantial financial need. For purposes of this section, substantial financial need means the difference between the student's financial resources available, including those available from parents, a parent, a guardian, or a spouse, and the student's anticipated educational expenses while attending the approved nursing program, taking into account that:

(a) In determining whether a dependent student has substantial financial need, the following factors shall be considered: (i) Serious family illness; (ii) the number of dependent children of the student's parents; (iii) the number of such dependent children attending institutions of higher education; and (iv) such other circumstances as may affect the ability of the student and student's parents to contribute toward the cost of the student's education; and

(b) In determining whether an independent or self-supporting student has substantial financial need, the following factors shall be considered: (i) Any serious illness in the student's family; (ii) the number of dependent children of the student; (iii) the number of such dependent children attending institutions of higher education; and (iv) such other circumstances as may affect the ability of the student or spouse to contribute toward the cost of the student's education.

(2) Each recipient of a loan under the act shall agree to engage in the practice of nursing in the State of Nebraska for the equivalent of one year of full-time practice for each year a loan is received.

(3) Each approved nursing program shall forward to the department the names of the qualified students recommended to receive loans under the act, based on the criteria specified in subsections (1) and (2) of this section, and any other information and documentation the department deems necessary.

**Source:** Laws 2001, LB 468, § 4; Laws 2003, LB 574, § 23.

**71-17,105 Loans; restrictions; repayment; when.**

(1) Loans received under the Nursing Student Loan Act shall be used only for educational expenses for an approved nursing program. The use of such loan funds by a student is subject to review by the department.

(2) Each loan shall be for one academic year. Each student shall not be loaned more than one thousand dollars per academic year nor a total of more than two thousand dollars.

(3) If a student who has received a loan discontinues the approved nursing program before completing the program, the student shall repay one hundred percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate. Such repayment shall commence within six months after the date of discontinuation of the course of study and shall be completed within the number of years for which loans were awarded.

(4) After completion of the approved nursing program, a loan awarded to a student shall be forgiven when the recipient of the loan has engaged in the full-time practice of nursing in Nebraska for a period of time which would be the equivalent of full-time practice for the number of years for which loans were received.

(5) If a recipient of a loan under the act is not engaged in full-time practice, or the equivalent of full-time practice, as required in subsection (2) of section 71-17,104, the recipient shall repay one hundred twenty-five percent of the outstanding loan principal. Such repayment shall be with simple interest at a rate of one point below the prime interest rate. Interest shall accrue beginning upon completion of the approved nursing program. Such repayment shall commence within six months after the date of discontinuation of the practice of nursing in Nebraska and shall be completed within the number of years for which loans were awarded.

**Source:** Laws 2001, LB 468, § 5.

#### **71-17,106 Rules and regulations.**

The department, in conjunction with approved nursing programs, shall adopt and promulgate rules and regulations to carry out the Nursing Student Loan Act. In conformance with such rules and regulations, institutions with approved nursing programs may act as agents of the department for the distribution of the loans to eligible students. The department may contract with outside sources to carry out the act.

**Source:** Laws 2001, LB 468, § 6.

#### **71-17,107 Nursing Student Loan Cash Fund; created; use; investment.**

The Nursing Student Loan Cash Fund is created. The fund shall be the repository for loan repayments received under section 71-17,105. 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 2001, LB 468, § 7.

#### **Cross References**

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

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

### **(j) NURSING FACULTY STUDENT LOAN ACT**

#### **71-17,108 Act, how cited.**

Sections 71-17,108 to 71-17,116 shall be known and may be cited as the Nursing Faculty Student Loan Act.

**Source:** Laws 2005, LB 146, § 1.

#### **Cross References**

**Nurse Practice Act**, see section 38-2201.

**71-17,109 Terms, defined.**

For purposes of the Nursing Faculty Student Loan Act:

- (1) Approved nursing program means a program offered by a public or private postsecondary educational institution in Nebraska (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;
- (2) Department means the Department of Health and Human Services; and
- (3) Masters or doctoral accredited nursing program means a postgraduate nursing education program that has been accredited by a nationally recognized accrediting agency and offered by a public or private postsecondary educational institution in Nebraska.

**Source:** Laws 2005, LB 146, § 2; Laws 2007, LB296, § 491.

**71-17,110 Loan; eligibility.**

To qualify for a loan under the Nursing Faculty Student Loan Act, a student shall (1) be a resident of Nebraska, (2) be enrolled in a masters or doctoral accredited nursing program, and (3) agree in writing to engage in nursing instruction in an approved nursing program.

**Source:** Laws 2005, LB 146, § 3.

**71-17,111 Loan distribution; conditions.**

Loans may be made by the department under the Nursing Faculty Student Loan Act for educational expenses of a qualified student who agrees in writing to engage in nursing instruction in an approved nursing program for two years of full-time nursing instruction for each year a loan is received, with a maximum of six years of nursing instruction in Nebraska in return for three years of loans under the act. Loans shall be subject to the following conditions:

- (1) Loans shall be used only for educational expenses for a masters or doctoral accredited nursing program. The use of loan funds by the recipient is subject to review by the department;
- (2) Each loan shall be for one academic year;
- (3) A loan recipient shall not receive more than five thousand dollars per academic year and shall not receive more than fifteen thousand dollars under the act;
- (4) Loans shall be forgiven at the rate of five thousand dollars loaned per two years of full-time nursing instruction in Nebraska;
- (5) If a loan recipient discontinues enrollment in the masters or doctoral accredited nursing program before completing the program, he or she shall repay to the department one hundred percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate as of the date the loan recipient signed the contract. Interest shall accrue as of the date the loan recipient signed the contract. Such repayment shall commence within six months after the date he or she discontinues enrollment and shall be completed within the number of years for which loans were awarded;
- (6) If, after the loan recipient completes the masters or doctoral accredited nursing program and before all of his or her loans are forgiven under the act,

he or she fails to begin or ceases full-time nursing instruction pursuant to the loan agreement, he or she shall repay to the department one hundred twenty-five percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate as of the date the loan recipient signed the contract. Interest shall accrue as of the date the loan recipient signed the contract. Such repayment shall commence within six months after the date of completion of the program or the date the loan recipient ceases full-time nursing instruction, whichever is later, and shall be completed within the number of years for which loans were awarded; and

(7) Institutions which offer a masters or doctoral accredited nursing program may act as agents of the department for the distribution of loans to eligible students.

**Source:** Laws 2005, LB 146, § 4.

**71-17,112 Nursing Faculty Student Loan Cash Fund; created; use; investment.**

The Nursing Faculty Student Loan Cash Fund is created. The fund shall consist of grants, private donations, fees collected pursuant to section 71-17,113, and loan repayments under the Nursing Faculty Student Loan Act remitted by the department to the State Treasurer for credit to the fund. The fund shall be used to administer the act and for loans to qualified students pursuant to the act. Any money in the Nursing Faculty Student Loan Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 146, § 5; Laws 2006, LB 962, § 1.

**Cross References**

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

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

**71-17,113 License renewal; extra fee.**

Beginning January 1, 2006, through December 31, 2007, the department shall charge a fee of one dollar, in addition to any other fee, for each license renewal for a registered nurse or licensed practical nurse pursuant to the Nurse Practice Act. Such fee shall be collected at the time of renewal and remitted to the State Treasurer for credit to the Nursing Faculty Student Loan Cash Fund.

**Source:** Laws 2005, LB 146, § 6; Laws 2007, LB296, § 492; Laws 2007, LB463, § 1192.

**Cross References**

**Nurse Practice Act**, see section 38-2201.

**71-17,114 Department; powers and duties.**

The department has the administrative responsibility to track loan recipients and to develop repayment tracking and collection mechanisms. The department may contract for such services. When a loan has been forgiven pursuant to section 71-17,111, the amount forgiven may be taxable income to the loan recipient and the department shall provide notification of the amount forgiven to the loan recipient, the Department of Revenue, and the Internal Revenue

Service if required by the Internal Revenue Code as defined in section 49-801.01.

**Source:** Laws 2005, LB 146, § 7.

**71-17,115 Report required.**

The department shall annually provide a report to the Governor and the Clerk of the Legislature on the status of the program, the status of the loan recipients, and the impact of the program on the number of nursing faculty in Nebraska. The report submitted to the Clerk of the Legislature shall be submitted electronically. Any report which includes information about loan recipients shall exclude confidential information or any other information which specifically identifies a loan recipient.

**Source:** Laws 2005, LB 146, § 8; Laws 2012, LB782, § 113.

**71-17,116 Rules and regulations.**

The department, in consultation with approved nursing programs in Nebraska, shall adopt and promulgate rules and regulations to carry out the Nursing Faculty Student Loan Act. The department may adopt rules that require the maximum forgiveness amount of fifteen thousand dollars pursuant to subdivision (3) of section 71-17,111 be present in the Nursing Faculty Student Loan Cash Fund before each qualified student is chosen.

**Source:** Laws 2005, LB 146, § 9.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

**71-17,117 Transferred to section 38-901.**

**71-17,118 Transferred to section 38-903.**

**71-17,119 Transferred to section 38-908.**

**71-17,120 Transferred to section 38-906.**

**71-17,121 Transferred to section 38-910.**

**71-17,122 Repealed. Laws 2007, LB 463, § 1319.**

**71-17,123 Repealed. Laws 2007, LB 463, § 1319.**

**71-17,124 Repealed. Laws 2007, LB 463, § 1319.**

**71-17,125 Repealed. Laws 2007, LB 185, § 54.**

**71-17,126 Repealed. Laws 2007, LB 185, § 54.**

**71-17,127 Repealed. Laws 2007, LB 185, § 54.**

**71-17,128 Transferred to section 38-907.**

**71-17,129 Repealed. Laws 2007, LB 463, § 1319.**

**71-17,130 Repealed. Laws 2007, LB 463, § 1319.**

## (l) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

**71-17,131 Transferred to section 38-201.**

**71-17,132 Transferred to section 38-202.**

**71-17,133 Transferred to section 38-203.**

**71-17,134 Transferred to section 38-205.**

**71-17,135 Transferred to section 38-206.**

**71-17,136 Transferred to section 38-207.**

**71-17,137 Transferred to section 38-208.**

**71-17,138 Transferred to section 38-209.**

**71-17,139 Repealed. Laws 2007, LB 463, § 1319.**

**71-17,140 Transferred to section 38-210.**

**71-17,141 Repealed. Laws 2007, LB 463, § 1319.**

## ARTICLE 18

## PATHOGENIC MICROORGANISMS

## Section

71-1801. Pathogenic microorganisms; sale and distribution; permit required.

71-1802. Permit; Department of Health and Human Services, authority; certification to State Veterinarian.

71-1803. Permit; State Veterinarian, authority; rules and regulations.

71-1804. Permit; duration; abrogation; renewal.

71-1805. Violation; penalty.

**71-1801 Pathogenic microorganisms; sale and distribution; permit required.**

The sale and distribution of any material or substance, containing live microorganisms which are pathogenic to humans, is hereby prohibited unless authorized by special permits as provided for by sections 71-1802 and 71-1803.

**Source:** Laws 1943, c. 153, § 1, p. 561; R.S.1943, § 71-1801.

**71-1802 Permit; Department of Health and Human Services, authority; certification to State Veterinarian.**

The Department of Health and Human Services is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases in humans, if in the opinion of the department there is sufficient warrant for their utilization for such purpose. The department shall certify to the State Veterinarian the materials or substances that contain live microorganisms which are pathogenic to humans. The department is further authorized to promulgate rules and regulations to carry out the provisions of this section.

**Source:** Laws 1943, c. 153, § 2, p. 562; R.S.1943, § 71-1802; Laws 1996, LB 1044, § 579; Laws 2007, LB296, § 494.

**71-1803 Permit; State Veterinarian, authority; rules and regulations.**



The State Veterinarian is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases of animals, if in the opinion of the Department of Health and Human Services there is sufficient warrant for their utilization for such purpose. In carrying out the duties of this section with reference to animals, the State Veterinarian shall take into consideration the certification made by the Department of Health and Human Services as provided for in section 71-1802. The State Veterinarian is further authorized to promulgate rules and regulations to carry out the provisions of this section.

**Source:** Laws 1943, c. 153, § 3, p. 562; R.S.1943, § 71-1803; Laws 1965, c. 334, § 8, p. 958; Laws 1996, LB 1044, § 580; Laws 2007, LB296, § 495.

**71-1804 Permit; duration; abrogation; renewal.**

The permits, issued under the provisions of sections 71-1802 and 71-1803, shall be valid for the period of one year, or part thereof, expiring on December 31 of each year. However, all such permits must remain subject to abrogation and renewal, if in the opinion of the Department of Health and Human Services or State Veterinarian there is sufficient warrant for such abrogation or renewal.

**Source:** Laws 1943, c. 153, § 4, p. 562; R.S.1943, § 71-1804; Laws 1996, LB 1044, § 581; Laws 2007, LB296, § 496.

**71-1805 Violation; penalty.**

Any person violating any of the provisions of sections 71-1801 to 71-1804 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1943, c. 153, § 5, p. 562; R.S.1943, § 71-1805; Laws 1977, LB 39, § 162; Laws 1996, LB 1044, § 582.

## ARTICLE 19

### CARE OF CHILDREN

#### Cross References

Abuse or neglect, criminal penalties, see section 28-705 et seq.  
 Before-and-after school services, school districts provide, see section 79-1104.  
 Central register, child protection cases, see section 28-718 et seq.  
 Child Protection and Family Safety Act, see section 28-710.  
 Confidential information, access, see section 43-3001.  
 Department of Health and Human Services, powers and duties, see section 43-905 et seq.  
 Early Childhood Interagency Coordinating Council, see section 43-3401.  
 Early Childhood Training Center, see section 79-1102.  
 Family finding services, see sections 43-2201 to 43-2209.  
 Fire safety inspection, see section 81-502.  
 Foster care payments, see sections 43-4208 to 43-4216.  
 Foster Care Review Act, see section 43-1318.  
 Foster Parent Liability and Property Damage Fund, see section 43-1320.  
 Interstate Compact for the Placement of Children, see section 43-1103.  
 Juvenile emergency shelter care, see section 13-317.  
 Juvenile Services Act, see section 43-2401.  
 Lead poisoning prevention program, see section 71-2518.  
 Medication administration, Medication Aide Act, see section 71-6718.  
 Nebraska Children's Commission, see section 43-4202 et seq.  
 Nebraska Coalition for Juvenile Justice, see section 43-2411.  
 Nebraska Indian Child Welfare Act, see section 43-1501.  
 Nebraska Juvenile Code, see section 43-2,129.  
 Nebraska Strengthening Families Act, see section 43-4701.  
 Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.  
 Quality Child Care Act, see section 43-2601.  
 Reimbursement by state, market rate survey, see section 43-536.

## PUBLIC HEALTH AND WELFARE

**School Readiness Tax Credit Act**, see section 77-3601.

**Sexual Predator Residency Restriction Act**, see section 29-4015.

**Social services**, enumerated, see section 68-1202.

**State Department of Education**, model regarding educational success of pregnant and parenting students, see section 79-2.151.

**Ward of state or court**, school district tuition, see section 79-215.

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

### (a) FOSTER CARE LICENSURE

- Section  
71-1901. Terms, defined.  
71-1902. Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.  
71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.  
71-1904. Rules and regulations; waiver of licensing standard; when.  
71-1905. Violation; penalty.  
71-1906. Native American foster homes; legislative intent.  
71-1906.01. Native American foster homes; rules and regulations.  
71-1906.02. Repealed. Laws 2002, LB 93, § 27.  
71-1906.03. Repealed. Laws 2002, LB 93, § 27.  
71-1907. Child passenger restraint; requirements; violation; penalty.

### (b) CHILD CARE LICENSURE

- 71-1908. Child Care Licensing Act; act, how cited; legislative findings.  
71-1909. Purposes of act; legislative intent.  
71-1910. Terms, defined.  
71-1911. Licenses; when required; issuance; corrective action status; display of license.  
71-1911.01. Fees.  
71-1911.02. Application; contents.  
71-1911.03. Applicant; liability insurance.  
71-1912. Department; investigation; inspections.  
71-1913. Fire and health inspections.  
71-1913.01. Immunization requirements; record; report.  
71-1913.02. Immunization reports; audit; deficiencies; duties.  
71-1913.03. Immunization; department; adopt rules and regulations.  
71-1914. Department; serve as coordinating agency; local rules and regulations; report of violation.  
71-1914.01. Unlicensed child care; investigation.  
71-1914.02. Unlicensed child care; restraining order or injunction; department; powers.  
71-1914.03. Unlicensed child care; violations; penalty; county attorney; duties.  
71-1915. Department; emergency powers; injunction.  
71-1916. Department; administrative procedures.  
71-1917. School-age child care program; inspections; Department of Health and Human Services; duties.  
71-1918. Complaint tracking system.  
71-1919. License denial; disciplinary action; grounds.  
71-1920. Disciplinary action; types; fines; disposition.  
71-1921. Disciplinary action; considerations.  
71-1922. Denial of license; disciplinary action; notice; final; when.  
71-1923. Voluntary surrender of license.

### (c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

- 71-1924. Children's Residential Facilities and Placing Licensure Act; act, how cited.  
71-1925. Purpose of act.  
71-1926. Terms, defined.  
71-1927. Residential child-caring agency or child-placing agency; license required; current license holders; how treated.  
71-1928. Applicant for license or renewal; application; requirements; contents.  
71-1929. Fees.

Section	
71-1930.	Licenses; expiration date; not transferable or assignable; public inspection and display.
71-1931.	Separate license required; duties of licensee.
71-1932.	Provisional license; period valid; conversion to regular license.
71-1933.	Inspection by department; inspection report.
71-1934.	State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.
71-1935.	Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.
71-1936.	Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.
71-1937.	Licensee; discrimination or retaliation prohibited; cause of action for relief.
71-1938.	Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.
71-1939.	Department; deny or refuse renewal of license; grounds.
71-1940.	Deny, refuse renewal, or take disciplinary action against license; grounds.
71-1941.	License; department; impose disciplinary actions; fine; how treated; recovery.
71-1942.	Disciplinary action; department; considerations.
71-1943.	Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.
71-1944.	Applicant or licensee; notification to department; failure to notify department; effect.
71-1945.	Applicant or licensee; hearing; procedure; director; decision; contents.
71-1946.	Decision of department; appeal; procedure.
71-1947.	Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.
71-1948.	Voluntary surrender of license.
71-1949.	Rules and regulations; contested cases; procedure.
71-1950.	Violations; penalty.
71-1951.	Existing rules and regulations, licenses, and proceedings; how treated.
	(d) STEP UP TO QUALITY CHILD CARE ACT
71-1952.	Step Up to Quality Child Care Act; act, how cited.
71-1953.	Purposes of act.
71-1954.	Terms, defined.
71-1955.	Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.
71-1956.	Child care and early childhood education program; rating; quality rating criteria.
71-1957.	Participation in quality rating and improvement system.
71-1958.	Quality scale rating; application; assignment of rating.
71-1959.	Quality scale rating review; reevaluation.
71-1960.	License under Child Care Licensing Act; denial of license or disciplinary act authorized.
71-1961.	Quality rating and improvement system incentives and support.
71-1962.	Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for employees; use.
71-1963.	Quality scale ratings available on web site; when.
71-1964.	Rules and regulations.

## (a) FOSTER CARE LICENSURE

**71-1901 Terms, defined.**

For purposes of sections 71-1901 to 71-1906.01:

(1) Person includes a partnership, limited liability company, firm, agency, association, or corporation;

- (2) Child means an unemancipated minor;
- (3) Child-placing agency has the definition found in section 71-1926;
- (4) Department means the Department of Health and Human Services;
- (5) Foster care means engaged in the service of exercising twenty-four-hour daily care, supervision, custody, or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1910;
- (6) Foster family home means a home which provides foster care to a child or children pursuant to a foster care placement as defined in section 43-1301. Foster family homes include licensed homes where the primary caretaker has no significant prior relationship with the child or children in his or her care and both licensed and unlicensed relative and kinship homes;
- (7) Kinship home means a home where a child or children receive foster care and at least one of the primary caretakers has previously lived with or is a trusted adult that has a preexisting, significant relationship with the child or children or a sibling of such child or children pursuant to section 43-1311.02;
- (8) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe;
- (9) Relative home means a home where a child or children receive foster care and at least one of the primary caretakers is related to the child or children, or to a sibling of such child or children pursuant to section 43-1311.02, in his or her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caretakers is an extended family member as defined in section 43-1503; and
- (10) Residential child-caring agency has the definition found in section 71-1926.

**Source:** Laws 1943, c. 154, § 1, p. 563; R.S.1943, § 71-1901; Laws 1945, c. 171, § 1, p. 548; Laws 1961, c. 415, § 25, p. 1258; Laws 1984, LB 130, § 13; Laws 1987, LB 386, § 1; Laws 1993, LB 121, § 425; Laws 1995, LB 401, § 24; Laws 1995, LB 451, § 1; Laws 1996, LB 1044, § 583; Laws 1997, LB 307, § 171; Laws 2001, LB 209, § 19; Laws 2002, LB 93, § 7; Laws 2008, LB797, § 12; Laws 2013, LB265, § 40.

**71-1902 Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.**

(1) The department shall adopt and promulgate rules and regulations on requirements for licenses, waivers, variances, and approval of foster family homes taking into consideration the health, safety, well-being, and best interests of the child. An initial assessment of a foster family home shall be completed and shall focus on the safety, protection, and immediate health, educational, developmental, and emotional needs of the child and the willingness and ability of the foster home, relative home, or kinship home to provide a safe, stable, and nurturing environment for a child for whom the department or child-placing agency has assumed responsibility.

(2)(a) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for one or more children without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. The terms and conditions for licensure may allow foster family homes to meet licensing standards through variances equivalent to the established standards.

(b) The department may issue a time-limited, nonrenewable provisional license to an applicant who is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the time period stated in the license. The department may issue a time-limited, nonrenewable probationary license to a licensee who agrees to establish compliance with rules and regulations that, when violated, do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant.

(3) Kinship homes and relative homes are exempt from licensure, however, such homes should make efforts to be licensed if such license will facilitate the permanency plan of the child. The department and child-placing agencies shall, when requested or as part of the child's permanency plan, provide resources for and assistance with licensure, including, but not limited to, information on licensure, waivers for relative homes, kinship-specific and relative-specific foster care training, referral to local service providers and support groups, and funding and resources available to address home safety or other barriers to licensure.

(4) Prior to placement in a nonlicensed relative home or kinship home, approval shall be obtained from the department. Requirements for initial approval shall include, but not be limited to, the initial assessment provided for in subsection (1) of this section, a home visit to assure adequate and safe housing, and a criminal background check of all adult residents. Final approval shall include, but not be limited to, requirements as appropriate under section 71-1903. The department or child-placing agency shall provide assistance to an approved relative home or kinship home to support the care, protection, and nurturing of the child. Support may include, but not be limited to, information on licensure, waivers, and variances, kinship-specific and relative-specific foster care training, mental and physical health care, options for funding for needs of the child, and service providers and support groups to address the needs of relative and kinship parents, families, and children.

(5) All nonprovisional and nonprobationary licenses issued under sections 71-1901 to 71-1906.01 shall expire two years from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license, except that if a licensee submits a completed renewal application thirty days or more before the license's expiration date, the license shall remain in effect until the department either renews the license or denies the renewal application. No license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

(6) A young adult continuing to reside in a foster family home as provided in subdivision (2) of section 43-4505 does not constitute an unrelated adult for the

purpose of determining eligibility of the family to be licensed as a foster family home.

**Source:** Laws 1943, c. 154, § 2, p. 564; R.S.1943, § 71-1902; Laws 1945, c. 171, § 2, p. 549; Laws 1949, c. 207, § 1, p. 595; Laws 1961, c. 415, § 26, p. 1258; Laws 1982, LB 928, § 52; Laws 1984, LB 130, § 14; Laws 1987, LB 386, § 2; Laws 1988, LB 930, § 1; Laws 1990, LB 1222, § 12; Laws 1995, LB 401, § 25; Laws 1995, LB 402, § 1; Laws 1995, LB 451, § 2; Laws 2001, LB 209, § 20; Laws 2002, LB 93, § 8; Laws 2011, LB648, § 3; Laws 2012, LB820, § 7; Laws 2013, LB216, § 18; Laws 2013, LB265, § 41.

**71-1903 Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.**

(1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of homes where foster care is provided. The department may conduct sanitation and health standards investigations pursuant to subsection (2) of this section. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.

(2) The department shall make an investigation and report of all licensed foster care providers subject to this section or applicants for licenses to provide such care to determine if standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in foster family homes are being met. The department may delegate the investigation authority to qualified local environmental health personnel.

(3) Before the foster care placement of any child in Nebraska by the department, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information

provided by such persons for providing foster care or for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

**Source:** Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967, c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66; Laws 2007, LB296, § 497; Laws 2013, LB265, § 42.

#### **71-1904 Rules and regulations; waiver of licensing standard; when.**

(1) The department shall adopt and promulgate rules and regulations pursuant to sections 71-1901 to 71-1906.01 for (a) the proper care and protection of children by licensees under such sections, (b) the issuance, suspension, and revocation of licenses to provide foster care, (c) the issuance, suspension, and revocation of probationary licenses to provide foster care, (d) the issuance, suspension, and revocation of provisional licenses to provide foster care, (e) the provision of training in foster care, which training shall be directly related to the skills necessary to care for children in need of out-of-home care, including, but not limited to, abused, neglected, dependent, and delinquent children, and (f) the proper administration of sections 71-1901 to 71-1906.01.

(2) The department may issue a waiver for any licensing standard not related to children's safety for a relative home that is pursuing licensure. Such waivers shall be granted on a case-by-case basis upon assessment by the department based upon the best interests of the child. A relative home that receives a waiver pursuant to this subsection shall be considered fully licensed for purposes of federal reimbursement under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351.

(3) The department shall adopt and promulgate rules and regulations establishing new foster home licensing requirements that ensure children's safety, health, and well-being but minimize the use of licensing mandates for nonsafety issues. Such rules and regulations shall provide alternatives to address nonsafety issues regarding housing and provide assistance to families in overcoming licensing barriers, especially in child-specific relative and kinship placements, to maximize appropriate reimbursement under Title IV-E of the federal Social Security Act, as amended, including expanding the use of kinship guardianship assistance payments under 42 U.S.C. 673(d), as such act and section existed on January 1, 2013.

**Source:** Laws 1943, c. 154, § 4, p. 564; R.S.1943, § 71-1904; Laws 1945, c. 171, § 4, p. 550; Laws 1961, c. 415, § 28, p. 1259; Laws 1990, LB 1222, § 13; Laws 1995, LB 401, § 27; Laws 1995, LB 402, § 2; Laws 1995, LB 451, § 4; Laws 2001, LB 209, § 22; Laws 2002, LB 93, § 10; Laws 2003, LB 54, § 1; Laws 2012, LB782, § 114; Laws 2012, LB1160, § 17; Laws 2013, LB222, § 26; Laws 2013, LB265, § 43; Laws 2013, LB269, § 9; Laws 2017, LB417, § 12.

**71-1905 Violation; penalty.**

Any person who violates any of the provisions of sections 71-1901 to 71-1906.01 shall be deemed guilty of a Class III misdemeanor.

**Source:** Laws 1943, c. 154, § 5, p. 564; R.S.1943, § 71-1905; Laws 1945, c. 171, § 5, p. 550; Laws 1977, LB 39, § 163; Laws 1995, LB 451, § 5; Laws 2001, LB 209, § 23; Laws 2002, LB 93, § 11.

**71-1906 Native American foster homes; legislative intent.**

In order to achieve the goals and further the purposes of the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act, it is the intent of the Legislature that Native American families have the option to meet separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503.

**Source:** Laws 1995, LB 451, § 6; Laws 1999, LB 475, § 4.

**Cross References**

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

**71-1906.01 Native American foster homes; rules and regulations.**

The department may adopt and promulgate rules and regulations establishing separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503. The department shall, in consultation with the Commission on Indian Affairs, develop appropriate standards for the licensing of such foster homes. Such standards shall comply with the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq., the Nebraska Indian Child Welfare Act, and all other applicable federal and state laws.

**Source:** Laws 1995, LB 451, § 7; Laws 1999, LB 475, § 5.

**Cross References**

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

**71-1906.02 Repealed. Laws 2002, LB 93, § 27.****71-1906.03 Repealed. Laws 2002, LB 93, § 27.****71-1907 Child passenger restraint; requirements; violation; penalty.**

Any person furnishing foster care who is subject to licensure under section 71-1902 or the Children's Residential Facilities and Placing Licensure Act, when transporting in a motor vehicle any children for whom care is being furnished, shall use an approved child passenger restraint system for each child, except that an occupant protection system or a three-point safety belt system as defined in section 60-6,265 may be used for any child as prescribed in section 60-6,267.

Any person violating this section shall be guilty of an infraction as defined in section 29-431 and shall have his or her license to furnish foster care revoked or suspended by the Department of Health and Human Services.

For purposes of this section, approved child passenger restraint system shall mean a restraint system which meets Federal Motor Vehicle Safety Standard



213 as developed by the National Highway Traffic Safety Administration, as such standard existed on July 20, 2002.

**Source:** Laws 1982, LB 69, § 1; Laws 1987, LB 386, § 4; Laws 1992, LB 958, § 10; Laws 1993, LB 370, § 475; Laws 1995, LB 401, § 28; Laws 1996, LB 1044, § 586; Laws 1997, LB 307, § 174; Laws 2000, LB 410, § 3; Laws 2002, LB 1073, § 3; Laws 2013, LB265, § 44; Laws 2015, LB231, § 43; Laws 2018, LB42, § 3.  
Operative date January 1, 2019.

**Cross References**

**Child passenger restraint system violation**, see sections 60-6,267 and 60-6,268.  
**Children's Residential Facilities and Placing Licensure Act**, see section 71-1924.

(b) CHILD CARE LICENSURE

**71-1908 Child Care Licensing Act; act, how cited; legislative findings.**

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

**Source:** Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67; Laws 2013, LB105, § 1; Laws 2018, LB1034, § 60.  
Effective date July 19, 2018.

**71-1909 Purposes of act; legislative intent.**

(1) The purposes of the Child Care Licensing Act are to provide:

(a) Statewide licensure standards for persons providing child care programs; and

(b) The department with authority to coordinate the enforcement of standards on licensees.

(2) It is the intent of the Legislature that the licensing and regulation of programs under the act exist for the protection of children and to assist parents in making informed decisions concerning enrollment and care of their children in such programs.

**Source:** Laws 1984, LB 130, § 2; Laws 1995, LB 401, § 30; Laws 1996, LB 1044, § 587; Laws 1997, LB 307, § 175; Laws 1997, LB 310, § 4; Laws 1999, LB 594, § 50; Laws 2004, LB 1005, § 68; Laws 2007, LB296, § 498.

**71-1910 Terms, defined.**

For purposes of the Child Care Licensing Act, unless the context otherwise requires:

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

(2)(a) Program means the provision of services in lieu of parental supervision for children under thirteen years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services pursuant to section 79-1104, or preschool or nursery school.

(b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 71-3101, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in section 13-304, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

**Source:** Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310, § 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499; Laws 2008, LB928, § 19.

**71-1911 Licenses; when required; issuance; corrective action status; display of license.**

(1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the

department for the first year of operation. At the end of one year of operation, the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

**Source:** Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998, LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98; Laws 2014, LB1050, § 2.

Denial of license for cause must be based on reasonable grounds, as distinguished from frivolous, arbitrary, or incompetent grounds. *Ballard v. Nebraska Dept. of Soc. Servs.*, 2 Neb. App. 809, 515 N.W.2d 437 (1994).

### 71-1911.01 Fees.

(1) For a license to operate a program for fewer than thirty children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of twenty-five dollars.

(2) For a license to operate a program for thirty or more children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of fifty dollars.

(3) If the department denies an application for a license and has not completed an inspection prior to such denial, the department shall return the license fee to the applicant.

**Source:** Laws 1993, LB 510, § 2; Laws 2004, LB 1005, § 72.

#### **71-1911.02 Application; contents.**

(1) An applicant for a license to operate a program required to be licensed under the Child Care Licensing Act shall file a written application with the department. The application shall be accompanied by the license fee pursuant to section 71-1911.01 and shall set forth the full name and address of the program to be licensed, the full name and address of the owner of such program, the names of all household members if the program is located in a residence, the names of all persons in control of the program, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual, a partnership, or the sole owner of a limited liability company or a corporation, (b) two of its members, if the applicant is a limited liability company, or (c) two of its officers, if the applicant is a corporation.

**Source:** Laws 2004, LB 1005, § 71; Laws 2006, LB 994, § 99.

#### **71-1911.03 Applicant; liability insurance.**

An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage of at least one hundred thousand dollars per occurrence prior to issuance of the license. A licensee subject to the Child Care Licensing Act on July 1, 2014, shall obtain such liability insurance coverage and provide written proof to the department within thirty days after July 1, 2014. Failure by a licensee to maintain the required level of liability insurance coverage shall be deemed noncompliance with the Child Care Licensing Act. If the licensee is the State of Nebraska or a political subdivision, the licensee may utilize a risk retention group or a risk management pool for purposes of providing such liability insurance coverage or may self-insure all or part of such coverage.

**Source:** Laws 2013, LB105, § 2.

#### **71-1912 Department; investigation; inspections.**

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff

and employees of programs by making a national criminal history record information check. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

**Source:** Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73; Laws 2014, LB1050, § 3.

#### **71-1913 Fire and health inspections.**

(1) The department may request the State Fire Marshal to inspect any program for fire safety pursuant to section 81-502. The State Fire Marshal shall immediately notify the department whenever he or she delegates authority for such inspections under such section.

(2) The department may investigate all facilities and programs of licensed providers of child care programs as defined in section 71-1910 or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of sanitation and physical well-being set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate this authority to qualified local environmental health personnel.

(3) This section does not apply to school-age child care programs which are licensed pursuant to section 71-1917.

**Source:** Laws 1984, LB 130, § 6; Laws 1991, LB 836, § 31; Laws 1995, LB 401, § 34; Laws 1996, LB 1044, § 589; Laws 1997, LB 307, § 177; Laws 1997, LB 622, § 102; Laws 1999, LB 594, § 53; Laws 2018, LB1034, § 61.  
Effective date July 19, 2018.

#### **71-1913.01 Immunization requirements; record; report.**

(1) Each program shall require the parent or guardian of each child enrolled in such program to present within thirty days after enrollment and periodically thereafter (a) proof that the child is protected by age-appropriate immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, haemophilus influenzae type B, and invasive pneumococcal disease and such other diseases as the department may from time to time specify based on then current medical and scientific knowledge, (b) certification by a physician, an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, or a physician assistant that immunization is not appropriate for a stated medical reason, or (c) a written statement that the parent or guardian does not wish to have such child so immunized and the reasons therefor. The program shall exclude a child from attendance until such proof, certification, or written statement is provided. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a certification or written statement pursuant to subdivision (b) or (c) of this subsection.

(2) Each program shall keep the written record of immunization, the certification, or the written statement of the parent or guardian. Such record, certification, or statement shall be kept by the program as part of the child's file, shall be available onsite to the department, and shall be filed with the department for review and inspection. Each program shall report to the department by November 1 of each year the status of immunization for children enrolled as of September 30 of that year, and children who have reached kindergarten age and who are enrolled in public or private school need not be included in the report.

**Source:** Laws 1987, LB 472, § 2; Laws 1992, LB 431, § 6; Laws 1995, LB 401, § 35; Laws 1996, LB 414, § 49; Laws 1996, LB 1044, § 590; Laws 1998, LB 1073, § 103; Laws 1999, LB 594, § 54; Laws 2000, LB 1115, § 70; Laws 2005, LB 256, § 92; Laws 2005, LB 301, § 38; Laws 2007, LB247, § 50; Laws 2007, LB296, § 500.

#### Cross References

**Childhood Vaccine Act**, see section 71-526.

**School-age children**, immunization requirements, see section 79-217 et seq.

#### **71-1913.02 Immunization reports; audit; deficiencies; duties.**

(1) The department shall perform annually a random audit of the reports submitted under section 71-1913.01 to check for compliance with such section on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the department.

(2) If the department discovers noncompliance with section 71-1913.01, the department shall allow a noncomplying program thirty days to correct deficiencies.

(3) The department shall develop and provide educational and other materials to programs and the public as may be necessary to implement section 71-1913.01.

**Source:** Laws 1987, LB 472, § 3; Laws 1995, LB 401, § 36; Laws 1996, LB 1044, § 591; Laws 1997, LB 307, § 178; Laws 1998, LB 1073, § 104; Laws 1999, LB 594, § 55; Laws 2005, LB 301, § 39; Laws 2007, LB296, § 501.

**71-1913.03 Immunization; department; adopt rules and regulations.**

The department shall adopt and promulgate rules and regulations relating to the required levels of protection, using as a guide the recommendations of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, Public Health Service, and the methods, manner, and frequency of reporting of each child's immunization status. The department shall furnish each program with copies of such rules and regulations and any other material which will assist in carrying out section 71-1913.01.

**Source:** Laws 1987, LB 472, § 4; Laws 1992, LB 431, § 7; Laws 1995, LB 401, § 37; Laws 1996, LB 1044, § 592; Laws 1998, LB 1073, § 105; Laws 2005, LB 301, § 40; Laws 2007, LB296, § 502.

**71-1914 Department; serve as coordinating agency; local rules and regulations; report of violation.**

(1) The department shall be the state's coordinating agency for licensure and regulation of programs in this state in order to (a) provide efficient services pursuant to the Child Care Licensing Act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 43-3402.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for programs whether or not the persons providing such programs are subject to licensure under section 71-1911. Such rules, regulations, or ordinances shall be as stringent as or more stringent than the department's rules and regulations for licensees pursuant to the Child Care Licensing Act. The city, village, or county adopting such rules, regulations, or ordinances and the department shall coordinate the inspection and supervision of licensees to avoid duplication of inspections. A city, village, or county shall report any violation of such rules, regulations, or ordinances to the department. The city, village, or county may administer and enforce such rules, regulations, and ordinances. Enforcement of provisions of the Child Care Licensing Act or rules or regulations adopted and promulgated under the act shall be by the department pursuant to sections 71-1919 to 71-1923.

**Source:** Laws 1984, LB 130, § 7; Laws 1995, LB 401, § 38; Laws 1997, LB 310, § 11; Laws 1997, LB 752, § 178; Laws 2001, LB 213, § 1; Laws 2004, LB 1005, § 74; Laws 2006, LB 994, § 100; Laws 2007, LB296, § 503.

**71-1914.01 Unlicensed child care; investigation.**

When the department receives a complaint of allegedly improper unlicensed care, the department shall investigate the claim and shall go to the premises of the alleged unlicensed program to ascertain if child care is being provided there which must be licensed according to the Child Care Licensing Act. If unlicensed child care is occurring in violation of the act, the person providing the unlicensed care shall have thirty days to either become licensed or cease providing unlicensed child care. The department shall visit the program again after such thirty-day period. If the person has not initiated action to become

licensed or ceased providing unlicensed child care, the department may involve law enforcement and may proceed under sections 71-1914.02 and 71-1914.03.

**Source:** Laws 1997, LB 310, § 8; Laws 2004, LB 1005, § 75.

**71-1914.02 Unlicensed child care; restraining order or injunction; department; powers.**

The department may apply for a restraining order or a temporary or permanent injunction against any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required. The district court of the county where the violation is occurring shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

**Source:** Laws 1997, LB 310, § 9; Laws 2004, LB 1005, § 76.

**71-1914.03 Unlicensed child care; violations; penalty; county attorney; duties.**

(1) Any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required is guilty of a Class IV misdemeanor. Each day the violation continues shall be a separate offense.

(2) The county attorney of the county in which any provision of unlicensed child care in violation of the act is occurring shall, when notified of such violation by the department or a law enforcement agency, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

**Source:** Laws 1997, LB 310, § 10; Laws 2004, LB 1005, § 77.

**71-1915 Department; emergency powers; injunction.**

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in a program, the department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the department shall continue to enforce such order or rescind or modify it.

(2) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Child Care Licensing Act, an order issued pursuant to the act, or any rule or regulation adopted and promulgated pursuant to the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders.

**Source:** Laws 1984, LB 130, § 8; Laws 1987, LB 472, § 5; Laws 1988, LB 1013, § 3; Laws 1993, LB 510, § 3; Laws 1995, LB 401, § 39;



Laws 1997, LB 310, § 12; Laws 1999, LB 594, § 56; Laws 2001, LB 213, § 2; Laws 2004, LB 1005, § 78; Laws 2007, LB296, § 504.

**71-1916 Department; administrative procedures.**

(1) The department shall adopt and promulgate such rules and regulations, consistent with the Child Care Licensing Act, as necessary for (a) the proper care and protection of children in programs regulated under the act, (b) the issuance and discipline of licenses, and (c) the proper administration of the act.

(2) The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children in programs licensed under the Child Care Licensing Act. Such standards shall insure that the program is providing proper care for and treatment of the children served and that such care and treatment is consistent with the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. The rules and regulations shall contain provisions which encourage the involvement of parents in child care for their children and insure the availability, accessibility, and high quality of services for children.

(3) The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act, except that the department shall hold a public hearing in each geographic area of the state prior to the adoption, amendment, or repeal of any rule or regulation. The department shall review and provide recommendations to the Governor for updating such rules and regulations at least every five years.

(4) The rules and regulations applicable to programs required to be licensed under the Child Care Licensing Act do not apply to any program operated or contracted by a public school district and subject to the rules and regulations of the State Department of Education as provided in section 79-1104.

(5) Contested cases of the department under the Child Care Licensing Act shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1984, LB 130, § 9; Laws 1988, LB 352, § 124; Laws 1995, LB 401, § 40; Laws 1997, LB 310, § 13; Laws 2001, LB 213, § 3; Laws 2004, LB 1005, § 79; Laws 2006, LB 994, § 101.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1917 School-age child care program; inspections; Department of Health and Human Services; duties.**

(1) For purposes of licensing a school-age child care program, a school-age child care program which operates in an accredited or approved school under the rules and regulations of the State Department of Education shall be deemed to meet the standards of the State Department of Education for the care and protection of children. The Department of Health and Human Services shall provide for inspections of school-age child care programs to determine compliance with this section. If a school-age child care program accepts reimbursement from a state or federal program, the Department of Health and Human Services shall also determine whether the school-age child care program

complies with the requirements of the state or federal program for such reimbursement.

(2) The Department of Health and Human Services may, in consultation with the State Department of Education, adopt and promulgate rules and regulations as necessary to implement this section.

**Source:** Laws 2018, LB1034, § 62.  
Effective date July 19, 2018.

**71-1918 Complaint tracking system.**

The department shall maintain a complaint tracking system for licensees under the Child Care Licensing Act.

**Source:** Laws 2004, LB 1005, § 81.

**71-1919 License denial; disciplinary action; grounds.**

The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(2) Violation of an order of the department under the act;

(3) Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;

(5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

- (8) Failure to comply with or violation of the Medication Aide Act;
- (9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;
- (10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees;
- (11) Failure to pay fees required under the Child Care Licensing Act; or
- (12) Failure to comply with the Step Up to Quality Child Care Act.

**Source:** Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505; Laws 2013, LB507, § 16.

#### Cross References

**Medication Aide Act**, see section 71-6718.

**Step Up to Quality Child Care Act**, see section 71-1952.

The Legislature has authorized the Department of Health and Human Services to make various rules and regulations necessary for the care and protection of children. That authorization extends to making rules for childcare providers and facilities.

Failure to abide by those rules may be cause for discipline against a licensee or the revocation of a license to operate. *Marion's v. Nebraska Dept. of Health & Human Servs.*, 289 Neb. 982, 858 N.W.2d 178 (2015).

#### **71-1920 Disciplinary action; types; fines; disposition.**

(1) The department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

- (a) Issue a probationary license;
- (b) Suspend or revoke a provisional, probationary, or operating license;
- (c) Impose a civil penalty of up to five dollars per child, based upon the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;
- (d) Establish restrictions on new enrollment in the program;
- (e) Establish restrictions or other limitations on the number of children or the age of the children served in the program; or
- (f) Establish other restrictions or limitations on the type of service provided by the program.

(2) A person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years.

(3) Any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 2004, LB 1005, § 83.

#### **71-1921 Disciplinary action; considerations.**

(1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The diligence exercised by the program in identifying or correcting the violation;

(c) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;

(d) Any previous violations committed by the program; and

(e) The financial benefit to the program of committing or continuing the violation.

(2) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-1920.

**Source:** Laws 2004, LB 1005, § 84.

**71-1922 Denial of license; disciplinary action; notice; final; when.**

(1) If the department determines to deny the issuance of or take disciplinary action against a license under the Child Care Licensing Act, the department shall send to the applicant or licensee, by certified mail to the address of the applicant or licensee, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, regulation, or order violated, and the type of disciplinary action which is pending. A copy of the notice shall also be mailed to the person in charge of the program if the licensee is not actually involved in the daily operation of the program. If the licensee is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(2) The denial or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing. The license shall continue in effect until the final order of the department if a hearing is requested. If the department does not receive such request within such fifteen-day period, the action of the department shall be final.

**Source:** Laws 2004, LB 1005, § 85; Laws 2007, LB296, § 506.

**71-1923 Voluntary surrender of license.**

A licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

**Source:** Laws 2004, LB 1005, § 86.

(c) CHILDREN'S RESIDENTIAL FACILITIES  
AND PLACING LICENSURE ACT

**71-1924 Children's Residential Facilities and Placing Licensure Act; act, how cited.**

Sections 71-1924 to 71-1951 shall be known and may be cited as the Children's Residential Facilities and Placing Licensure Act.

**Source:** Laws 2013, LB265, § 1.

**71-1925 Purpose of act.**

The purpose of the Children's Residential Facilities and Placing Licensure Act is to protect the public health and the health, safety, and welfare of children who reside in or who are placed in settings other than the home of their parent or legal guardian by providing for the licensing of residential child-caring agencies and child-placing agencies in the State of Nebraska. The act provides for the development, establishment, and enforcement of basic standards for residential child-caring agencies and child-placing agencies.

**Source:** Laws 2013, LB265, § 2.

**71-1926 Terms, defined.**

For purposes of the Children's Residential Facilities and Placing Licensure Act:

(1) Care means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children;

(2) Child means a minor less than nineteen years of age;

(3) Child-placing agency means any person other than the parent or legal guardian of a child that receives the child for placement and places or arranges for the placement of a child in a foster family home, adoptive home, residential child-caring agency, or independent living;

(4) Department means the Division of Public Health of the Department of Health and Human Services;

(5) Director means the Director of Public Health of the Division of Public Health;

(6) Person includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(7) Residential child-caring agency means a person that provides care for four or more children and that is not a foster family home as defined in section 71-1901.

**Source:** Laws 2013, LB265, § 3.

**71-1927 Residential child-caring agency or child-placing agency; license required; current license holders; how treated.**

(1) Except as provided in subsection (2) of this section, a residential child-caring agency or child-placing agency shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Children's Residential Facilities and Placing Licensure Act. No person shall hold itself out as a residential child-caring agency or child-placing agency or as providing such services unless licensed under the act. The department shall issue a license to a residential child-caring agency or a child-placing agency that satisfies the requirements for licensing under the act.

(2) A group home, child-caring agency, or child-placing agency licensed under sections 71-1901 to 71-1906.01 on May 26, 2013, shall be deemed licensed under the Children's Residential Facilities and Placing Licensure Act until the license under such sections expires, and renewal shall be under the act.

(3) For purposes of requiring licensure, a residential child-caring agency or child-placing agency does not include an individual licensed as a foster family home under sections 71-1901 to 71-1906.01, a person licensed under the Health Care Facility Licensure Act, a person operating a juvenile detention facility as defined in section 83-4,125, a staff secure youth confinement facility operated by a county, or a person providing only casual care for children at irregular intervals. Such persons may voluntarily apply for a license.

**Source:** Laws 2013, LB265, § 4.

**Cross References**

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

**71-1928 Applicant for license or renewal; application; requirements; contents.**

(1) An applicant for an initial or renewal license to operate a residential child-caring agency or a child-placing agency shall file a written application with the department. To be licensed as a child-placing agency, an applicant must be a corporation, nonprofit corporation, or limited liability company. The application shall be accompanied by the applicable fees under section 71-1929 and shall set forth the full name and address of the agency to be licensed, the full name and address of the owner of the agency, the names of all persons in control of the agency, and additional information as required by the department, including sufficient affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Children's Residential Facilities and Placing Licensure Act and evidence of adequate liability insurance or, if self-insured, of sufficient funds to pay liability claims. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by:

(a) The owner, if the applicant for licensure as a residential child-caring agency is an individual or partnership;

(b) Two of its members, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a limited liability company;

(c) Two of its officers who have the authority to bind the corporation to the terms of the application, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a corporation or a nonprofit corporation; or

(d) The head of the governmental unit having jurisdiction over the residential child-caring agency or child-placing agency to be licensed, if the applicant is a governmental unit.

**Source:** Laws 2013, LB265, § 5.

**71-1929 Fees.**

Fees applicable to an applicant for an initial or renewal license under the Children's Residential Facilities and Placing Licensure Act include:

(1) A nonrefundable license fee of twenty-five dollars;

(2) A nonrefundable renewal license fee of twenty-five dollars;

(3) A reinstatement fee of twenty-five dollars if the license has lapsed or has been suspended or revoked; and

(4) A duplicate original license fee of ten dollars when a duplicate is requested.

**Source:** Laws 2013, LB265, § 6.

**71-1930 Licenses; expiration date; not transferable or assignable; public inspection and display.**

(1) Except as otherwise provided in the Children's Residential Facilities and Placing Licensure Act:

(a) Licenses issued under the act shall expire on uniform annual dates established by the department specified in rules and regulations; and

(b) Licenses shall be issued only for the premises and individuals named in the application and shall not be transferable or assignable.

(2) Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

**Source:** Laws 2013, LB265, § 7.

**71-1931 Separate license required; duties of licensee.**

(1) An applicant for licensure under the Children's Residential Facilities and Placing Licensure Act shall obtain a separate license for each type of residential child-caring agency or child-placing agency that the applicant seeks to operate. A single license may be issued for a residential child-caring agency operating in separate buildings or structures on the same premises under one management.

(2) An applicant for licensure shall obtain a separate license for each type of placement service the applicant seeks to provide. When a child-placing agency has more than one office location, the child-placing agency shall inform the department of each office location and the services provided at each location. A single license may be issued for multiple offices, or the applicant may apply for individual licenses for each office location.

**Source:** Laws 2013, LB265, § 8.

**71-1932 Provisional license; period valid; conversion to regular license.**

A provisional license may be issued to an applicant for an initial residential child-caring agency or child-placing agency that substantially complies with requirements for licensure under the Children's Residential Facilities and Placing Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose a danger to the children residing in or served by the residential child-caring agency or child-placing agency. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the agency fully complies with the requirements for licensure under the act and rules and regulations.

**Source:** Laws 2013, LB265, § 9.

**71-1933 Inspection by department; inspection report.**

The department may inspect or provide for the inspection of residential child-caring agencies or child-placing agencies licensed under the Children's Residential Facilities and Placing Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the agency within ten working days after the completion of an inspection.

**Source:** Laws 2013, LB265, § 10.

**71-1934 State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.**

(1) The department may request the State Fire Marshal to inspect any residential child-caring agency for fire safety under section 81-502. The State Fire Marshal shall assess a fee for such inspection under section 81-505.01 payable by the applicant or licensee. The State Fire Marshal may delegate the authority to make such inspections to qualified local fire prevention personnel under section 81-502.

(2) The department may investigate any residential child-caring agency to determine if the place or places to be covered by the license meet standards of sanitation and physical well-being set by the department for the care and protection of the children who may be placed with the residential child-caring agency. The department may delegate this authority to qualified local environmental health personnel.

**Source:** Laws 2013, LB265, § 11.

**71-1935 Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.**

If the inspection report issued under section 71-1933 contains findings of noncompliance by a licensed residential child-caring agency or child-placing agency with any applicable provisions of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed under sections 71-1939 to 71-1946, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or welfare of the children residing in or served by the residential child-caring agency or child-placing agency, the department may send a letter to the agency requesting a statement of compliance. The letter shall include a description of each violation, a request that the residential child-caring agency or child-placing agency submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the residential child-caring agency or child-placing agency fails to submit and implement a statement of compliance which indicates a good faith effort to



correct the violations, the department may proceed under sections 71-1939 to 71-1946.

**Source:** Laws 2013, LB265, § 12.

**71-1936 Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.**

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. An individual submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

**Source:** Laws 2013, LB265, § 13.

**71-1937 Licensee; discrimination or retaliation prohibited; cause of action for relief.**

Licensees shall not discriminate or retaliate against an individual or the family of an individual residing in, served by, or employed at the residential child-caring agency or child-placing agency who has initiated or participated in any proceeding authorized by the Children's Residential Facilities and Placing Licensure Act or who has presented a complaint or provided information to the administrator of the residential child-caring agency or child-placing agency or the department. Such individual may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

**Source:** Laws 2013, LB265, § 14.

**71-1938 Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.**

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the health, safety, or welfare of a child in a residential child-caring agency or child-placing agency, the department may, without

notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care or placement of children by the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing, the department shall continue to enforce such order or rescind or modify it.

(2) A copy of the order shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the order shall be sent to the corporation's registered agent.

(3) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Children's Residential Facilities and Placing Licensure Act, an order issued under the act, or any rule or regulation adopted and promulgated under the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a residential child-caring agency or a child-placing agency without obtaining a license to do so, without alleging any further or more particular facts concerning the charge.

**Source:** Laws 2013, LB265, § 15.

#### **71-1939 Department; deny or refuse renewal of license; grounds.**

The department may deny or refuse to renew a license under the Children's Residential Facilities and Placing Licensure Act to any residential child-caring agency or child-placing agency that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including:

- (1) Failing an inspection under section 71-1933;
- (2) Having had a license revoked within the two-year period preceding application; or
- (3) Any of the grounds listed in section 71-1940.

**Source:** Laws 2013, LB265, § 16.

#### **71-1940 Deny, refuse renewal, or take disciplinary action against license; grounds.**

The department may deny, refuse to renew, or take disciplinary action against a license issued under the Children's Residential Facilities and Placing Licensure Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the act or the rules and regulations adopted and promulgated under the act;
- (2) Violation of an order of the department under the act;

(3) Conviction, admission, or substantial evidence of committing or permitting, aiding, or abetting another to commit any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where children's residential care or child-placing services are provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; or

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health, safety, or welfare of any individual residing in, served by, or employed at the residential child-caring agency or child-placing agency;

(5) Failure to allow an agent or employee of the department access to the residential child-caring agency or child-placing agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow local or state inspectors, investigators, or law enforcement officers access to the residential child-caring agency or child-placing agency for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

(8) Failure to comply with or violation of the Medication Aide Act;

(9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, resolutions, or ordinances regulating licensees;

(11) A history of misconduct or violations by an applicant or licensee involving children or vulnerable adults;

(12) Violation of the requirements of section 83-4,134.01; or

(13) Violation of any federal, state, or local law involving care of children.

**Source:** Laws 2013, LB265, § 17; Laws 2018, LB670, § 15.

Operative date July 19, 2018.

#### Cross References

Medication Aide Act, see section 71-6718.

**71-1941 License; department; impose disciplinary actions; fine; how treated; recovery.**

(1) The department may impose any one or a combination of the following types of disciplinary actions against the license of a residential child-caring agency or child-placing agency:

- (a) A fine not to exceed ten thousand dollars per violation;
- (b) A period of probation not to exceed two years, during which time the residential child-caring agency or child-placing agency may continue to operate under terms and conditions fixed by the order of probation;
- (c) Restrictions on new admissions to a residential child-caring agency or acceptance of new referrals by a child-placing agency;
- (d) Restrictions or other limitations on the number, gender, or age of children served by the residential child-caring agency or child-placing agency;
- (e) Other restrictions or limitations on the type of service provided by the residential child-caring agency or child-placing agency;
- (f) Suspension of the license for a period not to exceed three years, during which time the licensee shall not operate a residential child-caring agency or child-placing agency; or
- (g) Revocation of the license. A former licensee whose license has been revoked shall not apply for a license for a minimum of two years after the date of revocation.

(2) Any fine imposed and unpaid under the Children's Residential Facilities and Placing Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the residential child-caring agency or child-placing agency is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2013, LB265, § 18.

**71-1942 Disciplinary action; department; considerations.**

In determining what type of disciplinary action to impose, the department may consider:

- (1) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
- (2) The reasonableness of the diligence exercised by the licensee in identifying or correcting the violation;
- (3) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
- (4) Any previous violations committed by the licensee; and
- (5) The financial benefit to the licensee of committing or continuing the violation.

**Source:** Laws 2013, LB265, § 19.

**71-1943 Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.**

(1) Except as provided in section 71-1938, if the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last-known address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing under section 71-1944.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

**Source:** Laws 2013, LB265, § 20.

**71-1944 Applicant or licensee; notification to department; failure to notify department; effect.**

(1) Within fifteen days after the mailing of a notice under section 71-1943, an applicant or licensee shall notify the department in writing that the applicant or licensee:

- (a) Desires to contest the notice and requests a hearing; or
- (b) Does not contest the notice.

(2) If the department does not receive notification within the fifteen-day period, the action of the department shall be final.

**Source:** Laws 2013, LB265, § 21.

**71-1945 Applicant or licensee; hearing; procedure; director; decision; contents.**

(1) If the applicant or licensee requests a hearing under section 71-1944, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

**Source:** Laws 2013, LB265, § 22.

**71-1946 Decision of department; appeal; procedure.**

Any party to a decision of the department under the Children's Residential Facilities and Placing Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2013, LB265, § 23.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1947 Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.**

(1) A license issued under the Children's Residential Facilities and Placing Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the fees as provided in section 71-1929.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the fees as provided in section 71-1929.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final fifteen days after mailing the decision to the licensee unless the licensee requests a hearing within such fifteen-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. An application for an initial license may be made at the end of such two-year period.

**Source:** Laws 2013, LB265, § 24.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1948 Voluntary surrender of license.**

A licensee may voluntarily surrender a license issued under the Children's Residential Facilities and Placing Licensure Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the

licensee is under investigation or if the department has initiated disciplinary action against the licensee.

**Source:** Laws 2013, LB265, § 25.

**71-1949 Rules and regulations; contested cases; procedure.**

(1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe care of children, the department may adopt and promulgate rules and regulations consistent with the Children's Residential Facilities and Placing Licensure Act as necessary for:

- (a) The proper care and protection of children in residential child-caring agencies and child-placing agencies regulated under the act;
- (b) The issuance, discipline, and reinstatement of licenses; and
- (c) The proper administration of the act.

(2) Such rules and regulations shall establish standards for levels of care and services which may include, but are not limited to, supervision and structured activities designed to address the social, emotional, educational, rehabilitative, medical, and physical needs of children residing in or being placed by a residential child-caring agency or child-placing agency and may include the use of community resources to meet the needs of children and qualifications of staff.

(3) Contested cases of the department under the act shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 2013, LB265, § 26.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-1950 Violations; penalty.**

Any person who establishes, operates, or maintains a residential child-caring agency or child-placing agency subject to the Children's Residential Facilities and Placing Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such person operates after a first conviction shall be considered a subsequent offense.

**Source:** Laws 2013, LB265, § 27.

**71-1951 Existing rules and regulations, licenses, and proceedings; how treated.**

(1) All rules and regulations adopted and promulgated prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, may continue to be effective under the Children's Residential Facilities and Placing Licensure Act to the extent not in conflict with the act.

(2) All licenses issued prior to May 26, 2013, in accordance with sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall remain valid as issued for purposes of the Children's Residential Facilities and Placing Licensure Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall be subject to

the provisions of sections 71-1901 to 71-1906.01 or such other statutes as they existed prior to May 26, 2013.

**Source:** Laws 2013, LB265, § 28.

(d) STEP UP TO QUALITY CHILD CARE ACT

**71-1952 Step Up to Quality Child Care Act; act, how cited.**

Sections 71-1952 to 71-1964 shall be known and may be cited as the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 1.

**71-1953 Purposes of act.**

The purposes of the Step Up to Quality Child Care Act are to (1) provide accountability for public funds invested in child care and early childhood education programs, (2) provide a path to higher quality for child care and early childhood education programs, (3) provide parents a tool by which to evaluate the quality of child care and early childhood education programs, and (4) improve child development and school readiness outcomes.

**Source:** Laws 2013, LB507, § 2.

**71-1954 Terms, defined.**

For purposes of the Step Up to Quality Child Care Act:

(1) Applicable child care and early childhood education programs include:

(a) Child care programs licensed under the Child Care Licensing Act which serve children from birth to kindergarten-entrance age;

(b) Prekindergarten services and prekindergarten programs established pursuant to section 79-1104; and

(c) The federal Head Start programs, 42 U.S.C. 9831 et seq., and Early Head Start programs, 42 U.S.C. 9840a; and

(2) Fiscal year means the fiscal year of the State of Nebraska.

**Source:** Laws 2013, LB507, § 3.

**Cross References**

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

**71-1955 Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.**

The State Department of Education and the Department of Health and Human Services shall collaborate (1) to develop, implement, and provide oversight for a quality rating and improvement system for participating applicable child care and early childhood education programs, (2) to establish quality rating criteria for the system as provided in sections 71-1956 and 71-1958, (3) to use the quality rating criteria to assign quality scale ratings to participating applicable child care and early childhood education programs as provided in sections 71-1956 and 71-1958, and (4) to provide incentives and support, including professional development, training, and postsecondary education



opportunities, to participating applicable child care and early childhood education programs as provided in section 71-1961.

**Source:** Laws 2013, LB507, § 4.

**71-1956 Child care and early childhood education program; rating; quality rating criteria.**

(1) Each applicable child care and early childhood education program which applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955 shall be rated on a quality scale using ratings labeled steps one through five and based on quality rating criteria.

(2) Quality rating criteria shall be used to assign a quality scale rating as appropriate for the specific step. The criteria shall include, but not be limited to:

- (a) Licensing requirements as specified in the Child Care Licensing Act;
- (b) Facility safety and management;
- (c) Child development and school readiness outcomes;
- (d) Program curriculum, learning environment, and adult-child interactions;
- (e) Professional development and training;
- (f) Family engagement;
- (g) Program administration;
- (h) Standards used by nationally recognized accrediting bodies approved by the State Department of Education; and
- (i) Other standards as required by the State Department of Education for prekindergarten services and prekindergarten programs established pursuant to section 79-1104 and federal performance standards for Head Start and Early Head Start programs.

**Source:** Laws 2013, LB507, § 5.

**Cross References**

Child Care Licensing Act, see section 71-1908.

**71-1957 Participation in quality rating and improvement system.**

Application to participate in the quality rating and improvement system shall be voluntary for applicable child care and early childhood education programs with the following exceptions:

(1) Beginning July 1, 2014, and not later than December 31, 2014, each applicable child care or early childhood education program that received over five hundred thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958;

(2) Beginning July 1, 2015, and not later than December 31, 2015, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958; and

(3) Beginning July 1, 2016, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 in the preceding fiscal year shall, not later than December 31 of the applicable year or six months after actual receipt of such assistance, whichever is later, apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958.

**Source:** Laws 2013, LB507, § 6.

**71-1958 Quality scale rating; application; assignment of rating.**

(1) Quality rating criteria shall be used as provided in this section to assign a quality scale rating to each applicable child care or early childhood education program if the program applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955.

(2) Licensure under the Child Care Licensing Act for a program which serves children from birth to kindergarten-entrance age shall be sufficient criteria to be rated at step one.

(3) Meeting criteria established by the State Department of Education for a prekindergarten service or prekindergarten program established pursuant to section 79-1104 and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(4) Meeting performance standards required by the federal government for a federal Head Start program or Early Head Start program and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(5) Accreditation by a nationally recognized accrediting body approved by the State Department of Education and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(6) A participating applicable child care or early childhood education program operating under a provisional license shall have a quality scale rating at step one even if it meets other quality rating criteria. If a participating applicable child care or early childhood education program is at a quality scale rating higher than step one and the program's license is placed on disciplinary limitation, probation, or suspension, such program shall have its quality scale rating changed to step one. If an applicable child care or early childhood education program's license is revoked, the program is not eligible to participate in or receive a quality scale rating under the quality rating and improvement system until the program has an operating license which is in full force and effect.

**Source:** Laws 2013, LB507, § 7; Laws 2016, LB1066, § 1.

**Cross References**

Child Care Licensing Act, see section 71-1908.

**71-1959 Quality scale rating review; reevaluation.**

(1) An applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section

71-1955 may apply no more than once each fiscal year to have its quality scale rating reviewed.

(2) A participant shall meet all of the quality rating criteria for a step-two rating prior to applying for a step-three, step-four, or step-five rating. To meet quality rating criteria for a step-three, step-four, or step-five rating, a participant shall be independently evaluated based upon the quality rating criteria.

(3) A participant with a quality scale rating at step two through step four shall be reevaluated at least once every two fiscal years but no more than once in any fiscal year, including any review pursuant to subsection (1) of this section. A participant with a quality scale rating at step five shall be reevaluated at least once every five years but no more than once in any fiscal year. If a participant has achieved accreditation and is being reevaluated by a nationally recognized accrediting body approved by the State Department of Education, the state shall make reasonable efforts to conduct its reevaluation in the same fiscal year that the accrediting body is reevaluating the program.

**Source:** Laws 2013, LB507, § 8.

**71-1960 License under Child Care Licensing Act; denial of license or disciplinary act authorized.**

The Department of Health and Human Services may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act to a participating applicable child care or early childhood education program for failure to comply with the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 9.

**Cross References**

Child Care Licensing Act, see section 71-1908.

**71-1961 Quality rating and improvement system incentives and support.**

Quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act shall include, but not be limited to:

(1) Tiered child care subsidy reimbursements as provided in section 68-1206 based upon quality scale ratings of step three or higher that reflect the cost of higher quality programs and promote affordability of high-quality child care and early childhood education programs for all families;

(2) Incentive bonuses given to providers of child care and early childhood education programs upon completion of specific requirements of step two ratings or higher to improve quality based upon the quality rating criteria established pursuant to sections 71-1956 and 71-1958;

(3) Professional development, training, and scholarships developed in collaboration with community-based organizations, postsecondary education representatives, and other stakeholders;

(4) Support that expands family engagement in and understanding of high-quality early childhood education in ways that are inclusive and respectful of diversity of families and children with special needs; and

(5) Other incentives as necessary to carry out the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 10.

**71-1962 Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for employees; use.**

(1) Not later than March 1, 2014, the State Department of Education shall create and operate the Nebraska Early Childhood Professional Record System. The system shall be designed in order to:

- (a) Establish a data base of Nebraska's early childhood education workforce;
- (b) Verify educational degrees and professional credentials held and relevant training completed by employees of participating applicable child care and early childhood education programs; and
- (c) Provide such information to the Department of Health and Human Services for use in evaluating applications to be rated at a step above step one under section 71-1959.

(2) When an applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 applies under section 71-1959 to be rated at a step above step one, the child care or early childhood education program shall report the educational degrees and professional credentials held and relevant training completed by its child care and early childhood education employees to the Nebraska Early Childhood Professional Record System for the program to be eligible for a quality scale rating above step one.

(3) Any child care or early childhood education provider residing or working in Nebraska may report his or her educational degrees and professional credentials held, relevant training completed, and work history to the Nebraska Early Childhood Professional Record System.

(4) The State Department of Education shall develop a classification system for all employees of applicable child care and early childhood education programs listed in the Nebraska Early Childhood Professional Record System. The classification system shall be based on the employees' educational degrees and professional credentials held, relevant training completed, and work history and shall be made up of four levels, with level one being the least qualified and level four being the most qualified. The minimum qualification for an employee to be classified as level one shall be a Child Development Associate Credential or a one-year certificate or diploma in early childhood education or child development. The classification system shall be used for purposes of the tax credit granted in section 77-3605.

**Source:** Laws 2013, LB507, § 11; Laws 2015, LB525, § 1; Laws 2016, LB889, § 9.

**71-1963 Quality scale ratings available on web site; when.**

By July 1, 2017, the Department of Health and Human Services in collaboration with the State Department of Education shall make the quality scale ratings of participating applicable child care and early childhood education programs under the quality rating and improvement system developed pursuant to section 71-1955 available on a publicly accessible web site to provide parents a tool by which to evaluate the quality of child care and early childhood education programs and to promote accountability for public funding of such programs.

**Source:** Laws 2013, LB507, § 12.

**71-1964 Rules and regulations.**

The State Department of Education and the Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Step Up to Quality Child Care Act.

**Source:** Laws 2013, LB507, § 13.

**ARTICLE 20****HOSPITALS****Cross References**

**Abortions**, not required to perform, limitation of liability, see section 28-337 et seq.  
**Alcohol or controlled substance testing**, agent of state, when, see sections 37-1254.06, 60-4,164.01, and 60-6,202.  
**Assault on a health care professional**, see sections 28-929 to 28-931.01.  
**Assault with a bodily fluid**, see section 28-934.  
**Automated Medication Systems Act**, see section 71-2444.  
**Brain Injury Registry Act**, see section 81-653.  
**Cancer registry**, see section 81-642 et seq.  
**Child left at hospital**, duty, see section 29-121.  
**County medical facilities**, bonds, see section 23-3501 et seq.  
**Death during apprehension or custody**, duty to notify, see section 23-1821.  
**Emergency medical technicians**, perform activities at hospital, see section 38-1224.  
**Health Care Facility Licensure Act**, see section 71-401.  
**Health Care Professional Credentialing Verification Act**, see section 44-7001.  
**Health Carrier Grievance Procedure Act**, see section 44-7301.  
**Hospice licensure**, Health Care Facility Licensure Act, see section 71-401.  
**Hospital Authorities Act**, see section 23-3579.  
**Hospital districts**, see section 23-3573 et seq. and sections 77-2369 to 77-2385.  
**Hospital medical staff committee or hospital utilization committee**, members, limitation of liability, see section 25-12,121.  
**Hospital Sinking Fund Act**, see section 15-235.05.  
**Lien for services**, see section 52-401.  
**Managed Care Emergency Services Act**, see section 44-6825.  
**Managed Care Plan Network Adequacy Act**, see section 44-7101.  
**Medicaid**, Medical Assistance Act, see section 68-901.  
**Municipal Proprietary Function Act**, see section 18-2801.  
**Nebraska Health Care Certificate of Need Act**, see section 71-5801.  
**Nebraska Hospital and Physicians Mutual Insurance Association Act**, see section 44-2918.  
**Nebraska Hospital-Medical Liability Act**, see section 44-2855.  
**Nebraska Local Hospital District Act**, see section 23-3528.  
**Outpatient Surgical Procedures Data Act**, see section 81-6,111.  
**Patient Safety Improvement Act**, see section 71-8701.  
**Powers and duties of cities and villages**, see sections 14-102 et seq., 15-231, 15-234 et seq., 16-239, 17-121 et seq., and 17-961 et seq.  
**Public Facilities Construction and Finance Act**, see section 72-2301.  
**Quality Assessment and Improvement Act**, see section 44-7201.  
**Records**, implied consent to examination, see section 25-12,120.  
**Shaken baby syndrome**, requirements, see section 71-2103.  
**Smoking**, regulation, Nebraska Clean Indoor Air Act, see section 71-5716.  
**Standardized Health Claim Form Act**, see section 44-524.  
**State hospitals for the mentally ill:**  
    Administration, see Chapter 83, article 3.  
    Nebraska Mental Health Commitment Act, see section 71-901.  
**Statewide Trauma System Act**, see section 71-8201.  
**Stroke System of Care Act**, see section 71-4201.  
**Uniform Controlled Substances Act**, see section 28-401.01.  
**Uniform Credentialing Act**, see section 38-101.  
**Vital Statistics Act**, see section 71-601.  
**Volunteer in free clinic**, immunity, see section 25-21,188.02.

**(a) SURVEY AND CONSTRUCTION**

Section  
71-2001. Act, how cited.  
71-2002. Terms, defined.  
71-2003. Department; duties.  
71-2004. Department; powers and duties.  
71-2005. Repealed. Laws 1982, LB 829, § 3.  
71-2006. Administration; appropriation by the Legislature; expenditures; certification by department.  
71-2007. Department; inventory; survey; planning; program.  
71-2008. Construction program.

## PUBLIC HEALTH AND WELFARE

Section	
71-2009.	Survey and planning; application for federal funds; expenditure.
71-2010.	State plan; notice; hearing; submission to Surgeon General; hearing; approval of plans; review of program.
71-2011.	Department; maintenance and operation of hospitals and medical facilities; prescribe minimum standards.
71-2012.	State plan; need; construction.
71-2013.	Construction projects; federal funds; application; requirements.
71-2014.	Construction projects; hearing; approval; recommendation of department.
71-2015.	Construction projects; inspection; certification of work performed; payment due.
71-2016.	Hospital and Medical Facilities Fund; State Treasurer; disbursement by warrants; funds; investment.

### (b) BASIC STANDARDS

71-2017.	Repealed. Laws 2000, LB 819, § 162.
71-2017.01.	Repealed. Laws 2000, LB 819, § 162.
71-2017.02.	Repealed. Laws 1989, LB 355, § 19.
71-2017.03.	Repealed. Laws 2000, LB 819, § 162.
71-2017.04.	Repealed. Laws 2000, LB 819, § 162.
71-2017.05.	Repealed. Laws 1988, LB 1100, § 185.
71-2017.06.	Repealed. Laws 2000, LB 819, § 162.
71-2017.07.	Repealed. Laws 2000, LB 819, § 162.
71-2018.	Repealed. Laws 2000, LB 819, § 162.
71-2019.	Repealed. Laws 1982, LB 592, § 2.
71-2020.	Repealed. Laws 2000, LB 819, § 162.
71-2021.	Repealed. Laws 2000, LB 819, § 162.
71-2021.01.	Repealed. Laws 2000, LB 819, § 162.
71-2021.02.	Repealed. Laws 2000, LB 819, § 162.
71-2022.	Repealed. Laws 2000, LB 819, § 162.
71-2023.	Repealed. Laws 2000, LB 819, § 162.
71-2023.01.	Repealed. Laws 2000, LB 819, § 162.
71-2023.02.	Repealed. Laws 2000, LB 819, § 162.
71-2023.03.	Repealed. Laws 2000, LB 819, § 162.
71-2023.04.	Repealed. Laws 2000, LB 819, § 162.
71-2023.05.	Repealed. Laws 2000, LB 819, § 162.
71-2023.06.	Repealed. Laws 2000, LB 819, § 162.
71-2023.07.	Repealed. Laws 2000, LB 819, § 162.
71-2024.	Repealed. Laws 2000, LB 819, § 162.
71-2024.01.	Repealed. Laws 1987, LB 459, § 7.
71-2024.02.	Repealed. Laws 1987, LB 459, § 7.
71-2025.	Repealed. Laws 1982, LB 829, § 3.
71-2026.	Repealed. Laws 2000, LB 819, § 162.
71-2027.	Repealed. Laws 2000, LB 819, § 162.
71-2028.	Repealed. Laws 2000, LB 819, § 162.
71-2029.	Repealed. Laws 2000, LB 819, § 162.
71-2030.	Repealed. Laws 1965, c. 423, § 1.

### (c) NURSING HOMES

71-2031.	Transferred to section 71-6043.
71-2032.	Transferred to section 71-6044.
71-2033.	Transferred to section 71-6045.
71-2034.	Transferred to section 71-6046.
71-2035.	Transferred to section 71-6047.
71-2036.	Transferred to section 71-6048.
71-2037.	Transferred to section 71-6049.
71-2038.	Transferred to section 71-6050.
71-2039.	Transferred to section 71-6051.
71-2040.	Transferred to section 71-6052.
71-2041.	Repealed. Laws 1972, LB 1040, § 14.
71-2041.01.	Transferred to section 71-6053.
71-2041.02.	Transferred to section 71-6054.

## HOSPITALS

### Section

- 71-2041.03. Transferred to section 71-6055.
- 71-2041.04. Transferred to section 71-6056.
- 71-2041.05. Transferred to section 71-6057.
- 71-2041.06. Transferred to section 71-6058.
- 71-2041.07. Transferred to section 71-6059.
- 71-2042. Transferred to section 71-6067.
- 71-2043. Repealed. Laws 1973, LB 5, § 2.
- 71-2044. Repealed. Laws 1980, LB 686, § 11.
- 71-2045. Repealed. Laws 1972, LB 1040, § 14.
- 71-2045.01. Transferred to section 71-6065.
- 71-2045.02. Transferred to section 71-2041.02.
- 71-2045.03. Transferred to section 71-6060.
- 71-2045.04. Transferred to section 71-6062.
- 71-2045.05. Transferred to section 71-6061.
- 71-2045.06. Transferred to section 71-6066.
- 71-2045.07. Repealed. Laws 1988, LB 693, § 18.
- 71-2045.08. Transferred to section 71-6063.
- 71-2045.09. Transferred to section 71-6064.
- 71-2045.10. Transferred to section 71-6068.

### (d) MEDICAL AND HOSPITAL CARE

- 71-2046. Repealed. Laws 2011, LB 431, § 17.
- 71-2047. Repealed. Laws 2011, LB 431, § 17.
- 71-2048. Repealed. Laws 2011, LB 431, § 17.
- 71-2048.01. Clinical privileges; standards and procedures.
- 71-2049. Repealed. Laws 2009, LB 288, § 54.

### (e) CARE STAFF MEMBERS

- 71-2050. Repealed. Laws 1998, LB 1354, § 48.
- 71-2051. Repealed. Laws 1998, LB 1354, § 48.
- 71-2052. Repealed. Laws 1998, LB 1354, § 48.
- 71-2053. Repealed. Laws 1998, LB 1354, § 48.
- 71-2054. Repealed. Laws 1998, LB 1354, § 48.
- 71-2055. Repealed. Laws 1998, LB 1354, § 48.

### (f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

- 71-2056. Legislative findings.
- 71-2057. Terms, defined.
- 71-2058. Public hospital; marketing strategies and plans authorized.
- 71-2059. Governmental body; powers.
- 71-2060. Conversion of public funds.
- 71-2061. Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.

### (g) HOSPITAL CONSUMER INFORMATION

- 71-2062. Repealed. Laws 1994, LB 1222, § 65.
- 71-2063. Repealed. Laws 1994, LB 1222, § 65.
- 71-2064. Repealed. Laws 1994, LB 1222, § 65.
- 71-2065. Repealed. Laws 1994, LB 1222, § 65.
- 71-2066. Repealed. Laws 1994, LB 1222, § 65.
- 71-2067. Repealed. Laws 1994, LB 1222, § 65.
- 71-2068. Repealed. Laws 1994, LB 1222, § 65.
- 71-2069. Repealed. Laws 1994, LB 1222, § 65.
- 71-2070. Repealed. Laws 1994, LB 1222, § 65.
- 71-2071. Repealed. Laws 1994, LB 1222, § 65.
- 71-2072. Repealed. Laws 1994, LB 1222, § 65.
- 71-2073. Repealed. Laws 1994, LB 1222, § 65.
- 71-2074. Repealed. Laws 1994, LB 1222, § 65.
- 71-2075. Written estimate of charges; when required; notice.
- 71-2076. Listing of common diagnostic related groups; when required.
- 71-2077. Repealed. Laws 1994, LB 1222, § 65.

## **PUBLIC HEALTH AND WELFARE**

### Section

#### **(h) UNIFORM BILLING FORMS**

- 71-2078. Injury data; legislative findings.
- 71-2079. Terms, defined.
- 71-2080. Diagnosis code; required.
- 71-2081. Hospital; submission of data; release by department.
- 71-2082. Department; adopt rules and regulations.

#### **(i) SURGICAL INFECTIONS**

- 71-2083. Surgical infections; report required.

#### **(j) RECEIVERS**

- 71-2084. Terms, defined.
- 71-2085. Appointment of receiver; conditions.
- 71-2086. Appointment of receiver; procedure; temporary receiver; purpose of receivership.
- 71-2087. Receiver; appointment; effect; duties.
- 71-2088. Receiver; powers.
- 71-2089. Receiver; litigation authorized.
- 71-2090. Property and records; inspection by department.
- 71-2091. Receivership; receiver responsibility; successor appointed; when.
- 71-2092. Receivership; termination; procedure; failure to terminate; effect.
- 71-2093. Receivership; payment of expenses.
- 71-2094. Action against receiver; requirements.
- 71-2095. Receivership; acts not precluded; effect on liability.
- 71-2096. Interference with enforcement; penalty.

#### **(k) MEDICAID PROGRAM VIOLATIONS**

- 71-2097. Terms, defined.
- 71-2098. Civil penalties; department; powers.
- 71-2099. Civil penalties; type and amount; criteria.
- 71-20,100. Nursing Facility Penalty Cash Fund; created; use; investment.
- 71-20,101. Rules and regulations.

#### **(l) NONPROFIT HOSPITAL SALE ACT**

- 71-20,102. Act, how cited.
- 71-20,103. Terms, defined.
- 71-20,104. Acquisition of hospital; approval required; exception; notice; application; procedure.
- 71-20,105. Application; department; Attorney General; duties; single unified review process; when.
- 71-20,106. Review of acquisition; hearing; department or Attorney General; powers.
- 71-20,107. Review of application; Attorney General; department; duties; action for declaratory judgment; authorized; contest of denial.
- 71-20,108. Review of application; Attorney General; considerations.
- 71-20,109. Review of application; department; considerations.
- 71-20,110. Noncompliance with commitment to affected community; revocation of license; when.
- 71-20,111. Attorney General; powers to ensure compliance.
- 71-20,112. Licensure; issuance, renewal, revocation, or suspension; when; section, how construed.
- 71-20,113. Applicability of act.
- 71-20,114. Authority of Attorney General; act; how construed.

#### **(m) ASSISTED-LIVING FACILITIES**

- 71-20,115. Transferred to section 71-460.
- 71-20,116. Transferred to section 71-461.
- 71-20,117. Repealed. Laws 2000, LB 819, § 162.

#### **(n) CRITICAL ACCESS HOSPITALS**

- 71-20,118. Repealed. Laws 2000, LB 819, § 162.
- 71-20,119. Repealed. Laws 2000, LB 819, § 162.



Section

(o) VISITATION PRIVILEGES

71-20,120. Visitation privileges; designation by patient.

(p) DISPOSITION OF REMAINS OF CHILD BORN DEAD

71-20,121. Disposition of remains of child born dead; hospital; duties.

(a) SURVEY AND CONSTRUCTION

**71-2001 Act, how cited.**

Sections 71-2001 to 71-2016 may be cited as the State Hospital Survey and Construction Act.

**Source:** Laws 1947, c. 232, § 1, p. 733.

**71-2002 Terms, defined.**

For purposes of the State Hospital Survey and Construction Act:

- (1) Department shall mean the Department of Health and Human Services;
- (2) The federal act shall mean, but is not restricted to, Public Law 88-156, Public Law 88-164, Public Law 88-581, Public Law 88-443, and other measures of similar intent which have been, or may in the future be, passed by the Congress of the United States;
- (3) The Surgeon General shall mean the Surgeon General of the Public Health Service of the United States or such other federal office or agency responsible for the administration of the federal Hospital Survey and Construction Act, 42 U.S.C. 291 and amendments thereto;
- (4) Hospital includes, but is not restricted to, facilities or parts of facilities, which provide space for public health centers, mental health clinics, and general, tuberculosis, mental, long-term care, and other types of hospitals, and related facilities, such as homes for the aged or infirm, laboratories, out-patient departments, nurses' home and educational facilities, and central service facilities operated in connection with hospitals;
- (5) Public health center shall mean a publicly owned facility for providing public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers; and
- (6) Nonprofit hospital shall mean any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

**Source:** Laws 1947, c. 232, § 2, p. 733; Laws 1965, c. 421, § 1, p. 1349; Laws 1971, LB 753, § 1; Laws 1996, LB 1044, § 593; Laws 2007, LB296, § 507.

**71-2003 Department; duties.**

The department shall constitute the sole agency of the state for the purpose of (1) making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction as provided in section 71-2007, and (2) developing and administering a state plan for the

construction of public and other nonprofit hospitals as provided in the State Hospital Survey and Construction Act.

**Source:** Laws 1947, c. 232, § 3, p. 734; Laws 1965, c. 421, § 2, p. 1350; Laws 1996, LB 1044, § 594; Laws 1997, LB 307, § 179; Laws 2007, LB296, § 508.

**71-2004 Department; powers and duties.**

In carrying out the purposes of the State Hospital Survey and Construction Act, the department is authorized and directed:

- (1) To require such reports, make such inspections and investigations, and prescribe such regulations as it deems necessary;
- (2) To provide such methods of administration, appoint an assistant director and other personnel of the division, and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;
- (3) To procure the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;
- (4) To the extent desirable to effectuate the purposes of the State Hospital Survey and Construction Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;
- (5) To accept on behalf of the state and to deposit with the State Treasurer any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of the act and to expend the same for such purpose; and
- (6) To match funds with federal grants when required in order to obtain such funds in carrying out the act.

**Source:** Laws 1947, c. 232, § 4, p. 734; Laws 1967, c. 450, § 1, p. 1397; Laws 1981, LB 545, § 21; Laws 2007, LB296, § 509.

**71-2005 Repealed. Laws 1982, LB 829, § 3.**

**71-2006 Administration; appropriation by the Legislature; expenditures; certification by department.**

Such money as may be appropriated by the Legislature for the administration of the State Hospital Survey and Construction Act shall be expended upon proper certification by the department as provided by law.

**Source:** Laws 1947, c. 232, § 6, p. 736; Laws 1965, c. 421, § 4, p. 1351; Laws 2007, LB296, § 510.

**71-2007 Department; inventory; survey; planning; program.**

The department is authorized and directed to make an inventory of existing hospitals and medical facilities, including, but not restricted to, public, nonprofit and proprietary hospitals and other medical facilities, to accumulate pertinent comparable statistical data from existing hospitals and medical facilities, to survey the need for construction or expansion of hospitals and, on the basis of such statistical data, inventory and survey, and to develop a program for the construction or expansion of such public and other nonprofit hospitals and

medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and other essential health services without duplication or fragmentation of such facilities or services to all the people of the state.

**Source:** Laws 1947, c. 232, § 7, p. 736; Laws 1965, c. 421, § 5, p. 1351; Laws 1972, LB 1310, § 1; Laws 2007, LB296, § 511.

**71-2008 Construction program.**

The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state.

**Source:** Laws 1947, c. 232, § 8, p. 736; Laws 1965, c. 421, § 6, p. 1351.

**71-2009 Survey and planning; application for federal funds; expenditure.**

The department is authorized to make application to the Surgeon General for federal funds to assist in carrying out the activities provided in the State Hospital Survey and Construction Act. Such funds shall be deposited in the state treasury and shall be available when appropriated for expenditure for carrying out the purposes of the act. Any such funds received and not expended for such purposes shall be repaid to the Treasury of the United States.

**Source:** Laws 1947, c. 232, § 9, p. 736; Laws 1965, c. 421, § 7, p. 1352; Laws 2007, LB296, § 512.

**71-2010 State plan; notice; hearing; submission to Surgeon General; hearing; approval of plans; review of program.**

The department shall prepare and submit to the Surgeon General a state plan which shall include the hospital construction program developed under the State Hospital Survey and Construction Act, and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and regulations thereunder. The department shall, prior to the submission of such plan to the Surgeon General, give adequate publicity to a general description of all the provisions proposed to be included therein and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the Surgeon General, the department shall make the plan, or plans, or a copy thereof, available upon request to all interested persons or organizations. The department shall from time to time review the hospital construction program and submit to the Surgeon General any modifications necessary, and may submit to the Surgeon General such modifications of the state plan, or plans, not inconsistent with the requirements of the federal act.

**Source:** Laws 1947, c. 232, § 10, p. 737; Laws 1965, c. 421, § 8, p. 1352; Laws 2007, LB296, § 513.

**71-2011 Department; maintenance and operation of hospitals and medical facilities; prescribe minimum standards.**

The department shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and other medical facilities which receive federal aid for construction under the state plan.

**Source:** Laws 1947, c. 232, § 11, p. 737; Laws 1965, c. 421, § 9, p. 1353; Laws 2007, LB296, § 514.

**71-2012 State plan; need; construction.**

The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need.

**Source:** Laws 1947, c. 232, § 12, p. 737.

**71-2013 Construction projects; federal funds; application; requirements.**

Applications for hospital construction projects for which federal funds are requested shall be submitted to the department and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital. Each such application shall conform to federal and state requirements.

**Source:** Laws 1947, c. 232, § 13, p. 737; Laws 1965, c. 421, § 10, p. 1353; Laws 2007, LB296, § 515.

**71-2014 Construction projects; hearing; approval; recommendation of department.**

The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of section 71-2013 and is otherwise in conformity with the state plan, such application shall be approved and shall be recommended and forwarded to the Surgeon General.

**Source:** Laws 1947, c. 232, § 14, p. 738; Laws 2007, LB296, § 516.

**71-2015 Construction projects; inspection; certification of work performed; payment due.**

From time to time the department shall inspect each construction project approved by the Surgeon General and, if the inspection so warrants, the department shall certify to the Surgeon General that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

**Source:** Laws 1947, c. 232, § 15, p. 738; Laws 2007, LB296, § 517.

**71-2016 Hospital and Medical Facilities Fund; State Treasurer; disbursement by warrants; funds; investment.**

The State Treasurer is hereby authorized to receive federal funds and transmit them to such applicants or to the department, if to carry out any survey, administration, or other authorized function. There is hereby established,

separate and apart from all public money and funds of this state, a Hospital and Medical Facilities Fund. Money from the federal government for any authorized purpose of survey, planning, administration, or construction of approved projects, shall be received by the State Treasurer for credit to the fund. Warrants for all payments from the fund shall be drawn and paid in the manner provided by law. 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 1947, c. 232, § 16, p. 738; Laws 1965, c. 421, § 11, p. 1353; Laws 1969, c. 584, § 71, p. 2388; Laws 1995, LB 7, § 75.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(b) BASIC STANDARDS

**71-2017 Repealed. Laws 2000, LB 819, § 162.**

**71-2017.01 Repealed. Laws 2000, LB 819, § 162.**

**71-2017.02 Repealed. Laws 1989, LB 355, § 19.**

**71-2017.03 Repealed. Laws 2000, LB 819, § 162.**

**71-2017.04 Repealed. Laws 2000, LB 819, § 162.**

**71-2017.05 Repealed. Laws 1988, LB 1100, § 185.**

**71-2017.06 Repealed. Laws 2000, LB 819, § 162.**

**71-2017.07 Repealed. Laws 2000, LB 819, § 162.**

**71-2018 Repealed. Laws 2000, LB 819, § 162.**

**71-2019 Repealed. Laws 1982, LB 592, § 2.**

**71-2020 Repealed. Laws 2000, LB 819, § 162.**

**71-2021 Repealed. Laws 2000, LB 819, § 162.**

**71-2021.01 Repealed. Laws 2000, LB 819, § 162.**

**71-2021.02 Repealed. Laws 2000, LB 819, § 162.**

**71-2022 Repealed. Laws 2000, LB 819, § 162.**

**71-2023 Repealed. Laws 2000, LB 819, § 162.**

**71-2023.01 Repealed. Laws 2000, LB 819, § 162.**

**71-2023.02 Repealed. Laws 2000, LB 819, § 162.**

**71-2023.03 Repealed. Laws 2000, LB 819, § 162.**

**71-2023.04 Repealed. Laws 2000, LB 819, § 162.**

**71-2023.05 Repealed. Laws 2000, LB 819, § 162.**

71-2023.06 Repealed. Laws 2000, LB 819, § 162.

71-2023.07 Repealed. Laws 2000, LB 819, § 162.

71-2024 Repealed. Laws 2000, LB 819, § 162.

71-2024.01 Repealed. Laws 1987, LB 459, § 7.

71-2024.02 Repealed. Laws 1987, LB 459, § 7.

71-2025 Repealed. Laws 1982, LB 829, § 3.

71-2026 Repealed. Laws 2000, LB 819, § 162.

71-2027 Repealed. Laws 2000, LB 819, § 162.

71-2028 Repealed. Laws 2000, LB 819, § 162.

71-2029 Repealed. Laws 2000, LB 819, § 162.

71-2030 Repealed. Laws 1965, c. 423, § 1.

(c) NURSING HOMES

71-2031 Transferred to section 71-6043.

71-2032 Transferred to section 71-6044.

71-2033 Transferred to section 71-6045.

71-2034 Transferred to section 71-6046.

71-2035 Transferred to section 71-6047.

71-2036 Transferred to section 71-6048.

71-2037 Transferred to section 71-6049.

71-2038 Transferred to section 71-6050.

71-2039 Transferred to section 71-6051.

71-2040 Transferred to section 71-6052.

71-2041 Repealed. Laws 1972, LB 1040, § 14.

71-2041.01 Transferred to section 71-6053.

71-2041.02 Transferred to section 71-6054.

71-2041.03 Transferred to section 71-6055.

71-2041.04 Transferred to section 71-6056.

71-2041.05 Transferred to section 71-6057.

71-2041.06 Transferred to section 71-6058.

71-2041.07 Transferred to section 71-6059.

71-2042 Transferred to section 71-6067.

- 71-2043 Repealed. Laws 1973, LB 5, § 2.**
- 71-2044 Repealed. Laws 1980, LB 686, § 11.**
- 71-2045 Repealed. Laws 1972, LB 1040, § 14.**
- 71-2045.01 Transferred to section 71-6065.**
- 71-2045.02 Transferred to section 71-2041.02.**
- 71-2045.03 Transferred to section 71-6060.**
- 71-2045.04 Transferred to section 71-6062.**
- 71-2045.05 Transferred to section 71-6061.**
- 71-2045.06 Transferred to section 71-6066.**
- 71-2045.07 Repealed. Laws 1988, LB 693, § 18.**
- 71-2045.08 Transferred to section 71-6063.**
- 71-2045.09 Transferred to section 71-6064.**
- 71-2045.10 Transferred to section 71-6068.**

(d) MEDICAL AND HOSPITAL CARE

- 71-2046 Repealed. Laws 2011, LB 431, § 17.**
- 71-2047 Repealed. Laws 2011, LB 431, § 17.**
- 71-2048 Repealed. Laws 2011, LB 431, § 17.**
- 71-2048.01 Clinical privileges; standards and procedures.**

Any hospital required to be licensed under the Health Care Facility Licensure Act shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopathic physicians, osteopathic physicians and surgeons, certified nurse midwives, licensed psychologists, or dentists solely by reason of the credential held by the practitioner. Each such hospital shall establish reasonable standards and procedures to be applied when considering and acting upon an application for medical staff membership and privileges. Once an application is determined to be complete by the hospital and is verified in accordance with such standards and procedures, the hospital shall notify the applicant of its initial recommendation regarding membership and privileges within one hundred twenty days.

**Source:** Laws 1989, LB 646, § 1; Laws 1998, LB 1073, § 122; Laws 2000, LB 819, § 99; Laws 2011, LB68, § 1.

Cross References

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

- 71-2049 Repealed. Laws 2009, LB 288, § 54.**

(e) CARE STAFF MEMBERS

- 71-2050 Repealed. Laws 1998, LB 1354, § 48.**

**71-2051 Repealed. Laws 1998, LB 1354, § 48.**

**71-2052 Repealed. Laws 1998, LB 1354, § 48.**

**71-2053 Repealed. Laws 1998, LB 1354, § 48.**

**71-2054 Repealed. Laws 1998, LB 1354, § 48.**

**71-2055 Repealed. Laws 1998, LB 1354, § 48.**

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

**71-2056 Legislative findings.**

The Legislature finds that the market for hospital and health care services is becoming increasingly competitive, that hospitals and other health care providers are contracting to engage in economic joint ventures to form partnerships to offer integrated health care services to the public, and that this increasing competition is forcing hospitals and other health care providers to develop market strategies and strategic plans to effectively compete. The purpose of sections 71-2056 to 71-2061 is to enhance the ability of public hospitals to compete effectively and equally in the market for health care services.

**Source:** Laws 1985, LB 61, § 1.

**71-2057 Terms, defined.**

For purposes of sections 71-2056 to 71-2061, unless the context otherwise requires:

(1) Hospital health services means, but is not limited to, any health care clinical, diagnostic, or rehabilitation service and any administrative, managerial, health system, or operational service incident to such service;

(2) Market strategy means any plan, strategy, or device developed or intended to promote, sell, or offer to sell any hospital health service;

(3) Strategic plan means any plan, strategy, or device developed or intended to construct, operate, or maintain a health facility or to engage in providing, promoting, or selling a hospital health service; and

(4) Tangible benefit means, but is not limited to, any (a) reasonable expectation of a demonstrable increase in or maintenance of usage of the provider's services, (b) contractual provision requiring quality control of patient care and participation in a resource monitoring procedure, (c) reasonable expectation of prompt payment for any service rendered, or (d) activity that promotes health or furthers the provider's mission.

**Source:** Laws 1985, LB 61, § 2; Laws 1995, LB 366, § 5; Laws 2012, LB995, § 13.

**71-2058 Public hospital; marketing strategies and plans authorized.**

In addition to powers and duties otherwise provided by law, a hospital which is owned or operated by a political subdivision, state agency, or other governmental entity may develop marketing strategies for its existing hospital health services or any hospital health service to be provided in the future and may develop strategic plans for the development of any future hospital health service



or facility. Market strategies and strategic plans may be developed in cooperation with other health care providers.

**Source:** Laws 1985, LB 61, § 3.

**71-2059 Governmental body; powers.**

A political subdivision, state agency, or other governmental entity which owns or operates a hospital or hospital health service may, relative to the delivery of health care services:

(1) Enter into agreements with other health care providers, both governmental and nongovernmental, to share services or provide a tangible benefit to the hospital and into other cooperative ventures;

(2) Join or sponsor membership in organizations or associations intended to benefit the hospital or hospitals in general;

(3) Enter into contractual joint ventures with other governmental hospitals and health care organizations or nonprofit hospitals and health care organizations when entering into such a joint venture provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(4) Hold a membership interest in a nonprofit corporation when holding such interest provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(5) Have members of its governing authority or its officers or administrators serve without pay as directors or officers of any such venture;

(6) Offer, directly or indirectly, products and services of the hospital or any such venture to the general public; and

(7) Acquire, erect, staff, equip, or operate one or more medical office buildings, clinic buildings, or other buildings or parts thereof for medical services both within and outside the jurisdiction of the political subdivision, state agency, or other governmental entity. Such buildings or parts may be freestanding facilities or additions to or parts of an existing hospital or health care facility. Unless the political subdivision, state agency, or other governmental entity declares otherwise, the building or parts shall be considered an addition or improvement to the existing facilities. The political subdivision, state agency, or other governmental entity may lease all or part of such building to one or more health care practitioners or groups of health care practitioners or otherwise allow health care practitioners the use thereof on such terms as the political subdivision, state agency, or other governmental entity deems appropriate. Such lease or other use shall not be required to comply with public bidding requirements or approval of the electorate.

**Source:** Laws 1985, LB 61, § 4; Laws 1992, LB 1019, § 77; Laws 1993, LB 121, § 430; Laws 2012, LB995, § 14.

**71-2060 Conversion of public funds.**

The conversion of public funds intended for or contributed to an undertaking authorized by section 71-2059 for the benefit of any individual shall constitute

grounds for review and action by the Attorney General or the county attorney pursuant to sections 28-509 to 28-518.

**Source:** Laws 1985, LB 61, § 5.

**71-2061 Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.**

(1) All agreements and obligations undertaken and all securities issued, as permitted under sections 71-2056 to 71-2061, by a hospital which is owned or operated by a political subdivision, state agency, or other governmental entity shall be exclusively an obligation of the hospital and shall not create an obligation or debt of the state or any political subdivision, state agency, or other governmental entity. The full faith and credit of the state or of any political subdivision, state agency, or other governmental entity shall not be pledged for the payment of any securities issued by such a hospital, nor shall the state or any political subdivision, state agency, or other governmental entity be liable in any manner for the payment of the principal of or interest on any securities of such a hospital or for the performance of any pledge, mortgage, obligation, or agreement of any kind that may be undertaken by such a hospital.

(2) Expenditures permitted by sections 71-2056 to 71-2061 to be made by or on behalf of a hospital shall be for operating and maintaining public hospitals and public facilities for a public purpose. No such expenditure shall be considered to be a giving or lending of the credit of the state, or a granting of public money or a thing of value, in aid of any individual, association, or corporation within the meaning of any constitutional or statutory provision.

(3) Membership interests and contractual joint ventures permitted by section 71-2059 that further the purposes of the political subdivision, state agency, or other governmental entity shall not be considered to cause the political subdivision, state agency, or other governmental entity to become a subscriber or owner of capital stock or any interest in a private corporation or association within the meaning of Nebraska law.

**Source:** Laws 1985, LB 61, § 6; Laws 2012, LB995, § 15.

(g) HOSPITAL CONSUMER INFORMATION

**71-2062 Repealed. Laws 1994, LB 1222, § 65.**

**71-2063 Repealed. Laws 1994, LB 1222, § 65.**

**71-2064 Repealed. Laws 1994, LB 1222, § 65.**

**71-2065 Repealed. Laws 1994, LB 1222, § 65.**

**71-2066 Repealed. Laws 1994, LB 1222, § 65.**

**71-2067 Repealed. Laws 1994, LB 1222, § 65.**

**71-2068 Repealed. Laws 1994, LB 1222, § 65.**

**71-2069 Repealed. Laws 1994, LB 1222, § 65.**

**71-2070 Repealed. Laws 1994, LB 1222, § 65.**

**71-2071 Repealed. Laws 1994, LB 1222, § 65.**

**71-2072 Repealed. Laws 1994, LB 1222, § 65.**

**71-2073 Repealed. Laws 1994, LB 1222, § 65.**

**71-2074 Repealed. Laws 1994, LB 1222, § 65.**

**71-2075 Written estimate of charges; when required; notice.**

(1) Upon the written request of a prospective patient, his or her attending physician, or any authorized agent of the prospective patient, each hospital, except hospitals excluded under section 1886(d)(1)(B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall provide a written estimate of the average charges for health services related to a particular diagnostic condition or medical procedure if such services are provided by the hospital or center. Such written request shall include a written medical diagnosis made by a health care practitioner licensed to provide such diagnosis. The prospective patient or his or her agent may also provide to the hospital or center the prospective patient's age and sex, any complications or co-morbidities of the prospective patient, other procedures required for the prospective patient, and other information which would allow the hospital or center to provide a more accurate or detailed estimate. Such estimate shall be provided within seven working days from the date of submission of the written request and information necessary to prepare such an estimate.

(2) All hospitals and ambulatory surgical centers shall provide notice to the public that such hospital or center will provide an estimate of charges for medical procedures or diagnostic conditions pursuant to subsection (1) of this section. Such public notice shall be provided either as a part of the advertising or promotional materials of the hospital or center or by posting a notice in an obvious place within the public areas of the hospital or center.

**Source:** Laws 1985, LB 382, § 14; Laws 1994, LB 1210, § 120.

**71-2076 Listing of common diagnostic related groups; when required.**

(1) Effective January 1, 1986, each hospital, except hospitals excluded under section 1886(d)(1)(B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall identify the twenty most common diagnostic related groups for which services are provided by the hospital or center. Such listing of diagnostic related groups shall be made available to consumers of health care, along with the range of average charges for treatment and the associated average length of stay for each diagnostic related group listed. Such listing shall be provided to any person upon request. The information included in the listing shall show the date prepared and shall be regularly updated every six months.

(2) Any hospital or ambulatory surgical center which provides services for fewer than twenty diagnostic related groups or performs an insufficient number of procedures to compute a statistically valid average shall provide a listing to the public of the most common diagnostic related groups provided by the hospital or center and the average charges and length of stay for which a valid statistical average is available and shall disclose the circumstances for such limited available data.

**Source:** Laws 1985, LB 382, § 15; Laws 1994, LB 1210, § 121.

**71-2077 Repealed. Laws 1994, LB 1222, § 65.**

## (h) UNIFORM BILLING FORMS

**71-2078 Injury data; legislative findings.**

The Legislature finds and declares that the cost of injury and the deaths associated with injury are of a vital concern to the health of the residents of the State of Nebraska. The Legislature further finds that the availability of reliable injury data is necessary in order to provide for the protection and promotion of the health of the residents of the state. It is the intent of the Legislature to assist in and encourage injury prevention by requiring that specific data relating to injuries be available to health care professionals and analysts in order that such data be utilized for research, analytical, and statistical purposes.

**Source:** Laws 1993, LB 387, § 1.

**71-2079 Terms, defined.**

For purposes of sections 71-2078 to 71-2082:

(1) Hospital shall have the meaning found in section 71-419; and

(2) Hospital uniform billing form shall mean the Health Care Financing Administration claim form number 1450 mandated for the medicare program pursuant to sections 1814(a)(2) and 1871 of the federal Social Security Act, as amended, developed by the National Uniform Billing Committee and commonly referred to as the uniform billing claim form number 92.

**Source:** Laws 1993, LB 387, § 2; Laws 2000, LB 819, § 101.

**71-2080 Diagnosis code; required.**

Beginning on January 1, 1994, each hospital in this state shall provide a diagnosis code for the external cause of an injury, poisoning, or adverse effect for every patient discharged from a hospital, receiving outpatient services, or released from observation for whom such a code would be appropriate. The diagnosis code shall be used in addition to other codes required under federal or state statute, rule, or regulation. The diagnosis code shall be the same as the code required by the International Classification of Diseases, Ninth Revision, Clinical Modification System, or its most recent revision, and shall be entered on the hospital uniform billing form.

**Source:** Laws 1993, LB 387, § 3.

**71-2081 Hospital; submission of data; release by department.**

For each hospital uniform billing form on which a diagnosis code for the external cause of an injury, poisoning, or adverse effect is entered pursuant to section 71-2080, each hospital in this state shall submit data to the Department of Health and Human Services. Such data shall be submitted quarterly and shall include, but not be limited to, the diagnosis code for the external cause of an injury, poisoning, or adverse effect, other diagnosis codes, the procedure codes, admission date, discharge date, disposition code, and demographic data to include, but not be limited to, the birthdate, sex, city and county of residence, and zip code of residence for every patient discharged from a hospital, receiving outpatient services, or released from observation for whom a diagnosis code for the external cause of an injury, poisoning, or adverse effect is recorded pursuant to section 71-2080. This data shall be submitted to the department in written or computer form. The data provided to the department under this

section shall be classified for release as determined by the department only in aggregate data reports created by the department. Such aggregate data reports shall be considered public documents.

**Source:** Laws 1993, LB 387, § 4; Laws 1996, LB 1044, § 610; Laws 2005, LB 301, § 41; Laws 2007, LB296, § 518.

**71-2082 Department; adopt rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations governing the recordation, acquisition, compilation, and dissemination of all data collected pursuant to sections 71-2078 to 71-2082.

**Source:** Laws 1993, LB 387, § 5; Laws 1996, LB 1044, § 611; Laws 2007, LB296, § 519.

(i) SURGICAL INFECTIONS

**71-2083 Surgical infections; report required.**

Each hospital licensed in Nebraska shall, at least annually, provide surgeons performing surgery at such hospital a report as to the number and rates of surgical infections in surgical patients of such surgeon.

**Source:** Laws 1994, LB 1210, § 112.

(j) RECEIVERS

**71-2084 Terms, defined.**

For purposes of sections 71-2084 to 71-2096:

- (1) Department means the Department of Health and Human Services; and
- (2) Health care facility means a health care facility subject to licensing under the Health Care Facility Licensure Act.

**Source:** Laws 1983, LB 274, § 1; R.S.1943, (1990), § 71-6001; Laws 1995, LB 406, § 60; Laws 1996, LB 1044, § 612; Laws 2000, LB 819, § 102; Laws 2007, LB296, § 520.

**Cross References**

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

**71-2085 Appointment of receiver; conditions.**

The department may petition the district court for appointment of a receiver for a health care facility when any of the following conditions exist:

- (1) If the department determines that the health, safety, or welfare of the residents or patients is in immediate danger;
- (2) The health care facility is operating without a license;
- (3) The department has suspended, revoked, or refused to renew the existing license of the health care facility;
- (4) The health care facility is closing, or has informed the department that it intends to close, and adequate arrangements for the relocation of the residents or patients of such health care facility have not been made at least thirty days prior to closure; or

(5) The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency, the department believes a receiver is necessary.

**Source:** Laws 1983, LB 274, § 2; R.S.1943, (1990), § 71-6002; Laws 1995, LB 406, § 61.

**71-2086 Appointment of receiver; procedure; temporary receiver; purpose of receivership.**

(1) The department shall file the petition for the appointment of a receiver provided for in section 71-2085 in the district court of the county where the health care facility is located and shall request that a receiver be appointed for the health care facility.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The department shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the department, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

**Source:** Laws 1983, LB 274, § 3; R.S.1943, (1990), § 71-6003; Laws 1995, LB 406, § 62; Laws 2007, LB296, § 521.

**71-2087 Receiver; appointment; effect; duties.**

When a receiver is appointed under section 71-2086, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver shall not affect the rights of the owner or operator to defend against any claim, suit, or action against such owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department. A receiver shall:

(1) Take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession or the proceeds of any transfer of the assets or property and may use them only in the performance of the powers and duties set forth in this section and section 71-2088 or by order of the court;

(2) Apply the current revenue and current assets of the health care facility to current operating expenses and to debts incurred by the licensee, owner, or operator prior to the appointment of the receiver. The receiver may apply to the court for approval for payment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the health care facility or if the payment of the debts will interfere with the purposes of the receivership. The receiver shall give priority to expenditures for current, direct resident care, including nursing care, social services, dietary services, and housekeeping;

(3) Be responsible for the payment of taxes against the health care facility which become due during the receivership, including property taxes, sales and use taxes, withholding, taxes imposed pursuant to the Federal Insurance Contributions Act, and other payroll taxes, but not including state and federal taxes which are the liability of the owner or operator;

(4) Be entitled to and take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator, or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and necessary and appropriate records to the alternative placement of any transferred or discharged resident;

(5) Upon order of the court, provide for the orderly transfer of all residents or patients in the health care facility to other suitable facilities if correction of violations of federal and state laws and regulations is not possible or cannot be completed in a timely manner or there are reasonable grounds to believe the health care facility cannot be operated on a sound financial basis and in compliance with all applicable federal or state laws and regulations or make other provisions for the continued health, safety, and welfare of the residents or patients;

(6) Perform regular accountings; and

(7) Make periodic reports to the court and the department.

**Source:** Laws 1995, LB 406, § 63.

**71-2088 Receiver; powers.**

A receiver appointed under section 71-2086 may exercise those powers and shall perform those duties set out by the court. A receiver may:

- (1) Assume the role of administrator and take control of day-to-day operations or name an administrator to conduct the day-to-day operations of the health care facility subject to the supervision and direction of the receiver;
- (2) Remedy violations of federal and state laws and regulations governing the operation of the health care facility;
- (3) Let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties of the receiver; and
- (4) Hire or discharge any employees including the administrator.

**Source:** Laws 1995, LB 406, § 64.

**71-2089 Receiver; litigation authorized.**

The receiver in its discretion may, but shall not be required to, defend any claim, suit, or action against the receiver or the health care facility arising out of conditions, actions, or circumstances occurring or continuing at the health care facility after the appointment of the receiver. The receiver in its discretion may, but shall not be required to, defend any licensure, certification, or injunctive action initiated by the department after its appointment. The receiver shall not appeal or continue the appeal of any licensure or certification action initiated by the department against the health care facility before the appointment of the receiver. The receiver shall cooperate with the owner or operator in any defense undertaken by the owner or operator against any claim, suit, or action against him or her or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department.

**Source:** Laws 1995, LB 406, § 65.

**71-2090 Property and records; inspection by department.**

The department may inspect the health care facility at any time during the receivership, and the receiver shall cooperate with the department in any such inspection. All records required by federal or state statutes and regulations shall be kept on the premises of the health care facility and shall be available for inspection and copying by any authorized employee of the department.

**Source:** Laws 1995, LB 406, § 66.

**71-2091 Receivership; receiver responsibility; successor appointed; when.**

The receiver is responsible for the conduct of the health care facility during the receivership. The department may apply to the court for an order terminating the appointment of a receiver and appointing a successor receiver when violations of federal or state laws or regulations occur during the receivership or for other appropriate reasons.

**Source:** Laws 1995, LB 406, § 67.

**71-2092 Receivership; termination; procedure; failure to terminate; effect.**

(1) A receivership established under section 71-2086 may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

(a) Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the



receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto;

(b) By the current licensee of the health care facility, alleging that termination of the receivership is merited for the reasons set forth in subdivision (a) of this subsection, but that the receiver has declined to join in the petition for termination of the receivership;

(c) By the receiver, stating that all residents or patients of the health care facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the health care facility on a sound financial basis and in compliance with federal and state laws and regulations and asking that the court approve the surrender of the license of the health care facility to the department and the subsequent return of the control of the premises of the health care facility to the owner of the premises; or

(d) By the department (i) stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto or (ii) stating that there are reasonable grounds to believe that the health care facility cannot be operated in compliance with federal or state law and regulations and asking that the court order the removal of the residents or patients to appropriate alternative placements, the closure of the facility, and the license, if any, surrendered to the department or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department.

(2) If the receivership has not been terminated within twelve months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department. The receivership period may be extended as necessary to protect the health, safety, and welfare of the residents or patients.

**Source:** Laws 1983, LB 274, § 4; R.S.1943, (1990), § 71-6004; Laws 1995, LB 406, § 68.

#### **71-2093 Receivership; payment of expenses.**

The health care facility for which a receiver is appointed shall be responsible for payment of the expenses of a receivership established under section 71-2086 unless the court directs otherwise. The expenses include, but are not limited to:

- (1) Compensation for the receiver and any related receivership expenses;
- (2) Expenses incurred by the health care facility for the continuing care of the residents or patients of the health care facility;
- (3) Expenses incurred by the health care facility for the maintenance of buildings and grounds of the health care facility; and

(4) Expenses incurred by the health care facility in the ordinary course of business, such as employees' salaries and accounts payable.

**Source:** Laws 1983, LB 274, § 5; R.S.1943, (1990), § 71-6005; Laws 1995, LB 406, § 69.

**71-2094 Action against receiver; requirements.**

No person shall bring an action against a receiver appointed under section 71-2086 without first securing leave of the court. The receiver is liable in his or her personal capacity for intentional wrongdoing or gross negligence. In all other cases, the receiver is liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets. The receiver is not personally liable for the expenses of the health care facility during the receivership. The receiver is an employee of the state only for the purpose of defending a claim filed against the receiver. The Attorney General shall defend or arrange for the defense of all suits filed against the receiver personally.

**Source:** Laws 1995, LB 406, § 70.

**71-2095 Receivership; acts not precluded; effect on liability.**

Sections 71-2086 to 71-2094 shall not:

(1) Preclude the sale or lease of a health care facility as otherwise provided by law; or

(2) Affect the civil or criminal liability of the licensee, owner, or operator of the health care facility placed in receivership for any acts or omissions of the licensee, owner, or operator which occurred before the receiver was appointed.

**Source:** Laws 1983, LB 274, § 6; R.S.1943, (1990), § 71-6006; Laws 1995, LB 406, § 71.

**71-2096 Interference with enforcement; penalty.**

(1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of sections 71-2084 to 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident or patient of a health care facility in private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a health care facility, or (c) preserving evidence of any violations of sections 71-2084 to 71-2096.

(2) The county attorney of the county in which the health care facility is located or the Attorney General may be requested by the department to initiate prosecution.

**Source:** Laws 1983, LB 274, § 7; R.S.1943, (1990), § 71-6007; Laws 1995, LB 406, § 72; Laws 2007, LB296, § 522.

(k) MEDICAID PROGRAM VIOLATIONS

**71-2097 Terms, defined.**

For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalties include any remedies required under federal law and include the imposition of monetary penalties;

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

(3) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(4) Nursing facility means any intermediate care facility or nursing facility, as defined in sections 71-420 and 71-424, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

**Source:** Laws 1996, LB 1155, § 72; Laws 1997, LB 307, § 180; Laws 2000, LB 819, § 103; Laws 2007, LB296, § 523.

#### **71-2098 Civil penalties; department; powers.**

(1) The department may assess, enforce, and collect civil penalties against a nursing facility which the department has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the department under section 81-604.03.

(2) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any monetary penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Monetary penalties assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

**Source:** Laws 1996, LB 1155, § 73; Laws 1997, LB 307, § 181; Laws 2007, LB296, § 524.

#### **71-2099 Civil penalties; type and amount; criteria.**

The department shall adopt criteria for determining the type and amount of the civil penalty assessed under section 71-2098. Such criteria shall include, but need not be limited to, consideration of the following factors:

- (1) The period of time over which the violation occurred;
- (2) The frequency of the violation;
- (3) The nursing facility's history concerning the type of violation for which the civil penalty is assessed;
- (4) The nursing facility's intent or reason for the violation;
- (5) The effect, if any, of the violation on the health, safety, security, or welfare of the residents;
- (6) The existence of other violations, in combination with the violation for which the civil penalty is assessed, which increase the threat to the health, safety, security, rights, or welfare of the residents;
- (7) The accuracy, thoroughness, and availability of records regarding the violation, which the nursing facility is required to maintain; and

(8) The number of additional related violations occurring within the same time span as the violation in question.

**Source:** Laws 1996, LB 1155, § 74; Laws 1997, LB 307, § 182; Laws 2007, LB296, § 525.

**71-20,100 Nursing Facility Penalty Cash Fund; created; use; investment.**

(1) The Nursing Facility Penalty Cash Fund is created. Monetary penalties collected by the department pursuant to section 71-2098 shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund to protect the health or property of individuals residing in nursing facilities which the department has found in violation of federal regulations for participation in the medicaid program. Circumstances considered as a basis for distribution from the fund include paying costs to:

- (a) Relocate residents to other facilities;
- (b) Maintain the operation of a nursing facility pending correction of violations;
- (c) Close a nursing facility; and
- (d) Reimburse residents for personal funds lost.

**Source:** Laws 1996, LB 1155, § 75; Laws 1997, LB 307, § 183; Laws 2007, LB296, § 526.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-20,101 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out sections 71-2097 to 71-20,101, including rules and regulations for notice and appeal procedures.

**Source:** Laws 1996, LB 1155, § 76; Laws 1997, LB 307, § 184; Laws 2007, LB296, § 527.

**(l) NONPROFIT HOSPITAL SALE ACT**

**71-20,102 Act, how cited.**

Sections 71-20,102 to 71-20,113 shall be known and may be cited as the Nonprofit Hospital Sale Act.

**Source:** Laws 1996, LB 1188, § 1.

**71-20,103 Terms, defined.**

For purposes of the Nonprofit Hospital Sale Act:

- (1) Department means the Department of Health and Human Services;
- (2) Hospital has the meaning found in section 71-419;

(3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and

(4) Person has the meaning found in section 71-5803.12.

**Source:** Laws 1996, LB 1188, § 2; Laws 1997, LB 307, § 185; Laws 1997, LB 798, § 1; Laws 2000, LB 819, § 104; Laws 2007, LB296, § 528.

**71-20,104 Acquisition of hospital; approval required; exception; notice; application; procedure.**

(1) No person shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having applied for and received the approval of the department and without first having notified the Attorney General and, if applicable, received approval from the Attorney General pursuant to the Nonprofit Hospital Sale Act. No person shall engage in the acquisition of a hospital not owned by a nonprofit corporation without first having applied for and received the approval of the department pursuant to the act unless such acquiring person is a nonprofit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or is a governmental entity. For purposes of the act, approval of the department and the Attorney General shall not be required for the acquisition of a hospital not owned by a nonprofit corporation as follows: (a) The lease or sale of a county hospital approved under subdivision (3) of section 23-3504; or (b) the dissolution of a hospital district approved under sections 23-3544 to 23-3546 or the merger of hospital districts approved under sections 23-3573 to 23-3578.

(2) Any person not required to obtain the approval of the department under the Nonprofit Hospital Sale Act shall give the Attorney General at least thirty days' notice of an impending acquisition, during which time the Attorney General may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

(3) The application shall be submitted to the department and the Attorney General on forms provided by the department and shall include the name of the seller, the name of the purchaser or other parties to an acquisition, the terms of the proposed agreement, the sale price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in section 71-20,108, and all other related documents. A copy of the application and copies of all additional related materials shall be submitted to the department and to the Attorney General at the same time. The applications and all related

documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

**Source:** Laws 1996, LB 1188, § 3; Laws 2012, LB995, § 16.

**71-20,105 Application; department; Attorney General; duties; single unified review process; when.**

(1) Within five working days after receipt of an application under section 71-20,104, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail any person who has requested notice of the filing of such applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department.

(2) Within sixty days after receiving an application, the department shall review the application in accordance with the standards set forth in the Nonprofit Hospital Sale Act and approve or disapprove the acquisition pursuant to the act.

Within twenty days after receiving an application, the Attorney General shall determine whether to review the application in accordance with section 71-20,108 and shall so notify the applicant. If the Attorney General determines to review the application in accordance with the act, the Attorney General shall, within sixty days after receiving the application, review the application in accordance with the standards set forth in section 71-20,108 and approve or disapprove the acquisition. If the Attorney General determines not to review the application in accordance with the act, then none of the other provisions of the act applicable to review by the Attorney General shall apply.

(3) For acquisitions which require approval from the department under the Nonprofit Hospital Sale Act and a certificate of need under the Nebraska Health Care Certificate of Need Act, the applicant shall submit a single application for both purposes and such application shall be reviewed under a single unified review process by the department. Following the single unified review process, the department shall simultaneously issue (a) its decision for purposes of the Nebraska Health Care Certificate of Need Act and (b) its decision for purposes of the Nonprofit Hospital Sale Act.

**Source:** Laws 1996, LB 1188, § 4.

**Cross References**

Nebraska Health Care Certificate of Need Act, see section 71-5801.

**71-20,106 Review of acquisition; hearing; department or Attorney General; powers.**

The department, and the Attorney General if he or she determines to review the acquisition, shall during the course of review under section 71-20,105 or 71-20,107 hold a public hearing in which any person may file written comments and exhibits or appear and make a statement. The department or the Attorney General may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

The hearing shall be held not later than thirty days after receipt of an application. The hearing shall be held upon ten working days' notice, not including days the application is deemed to be incomplete.

**Source:** Laws 1996, LB 1188, § 5.

**71-20,107 Review of application; Attorney General; department; duties; action for declaratory judgment; authorized; contest of denial.**

(1) If the Attorney General determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 71-20,108. Within sixty days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

If the Attorney General does not act within sixty days after receipt of an application, the application shall be deemed approved. If the Attorney General approves or disapproves the acquisition, the applicant, or any person who has submitted comments under section 71-20,106, if the person has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment under the Uniform Declaratory Judgments Act for a determination that the acquisition is or is not in the public interest as provided in section 71-20,108.

(2) The department shall review the completed application in accordance with the standards enumerated in section 71-20,109. Within sixty days after receipt of a completed application, the department shall:

- (a) Approve the acquisition, with or without any specific modifications; or
- (b) Disapprove the acquisition.

The department shall not make its decision subject to any condition not directly related to criteria enumerated in section 71-20,109, and any condition or modification shall bear a direct and rational relationship to the application under review.

The applicant or any affected person may contest a denial in the manner provided in the Administrative Procedure Act for contested cases. The findings, conclusions, and decisions of the department shall constitute the determination of the department, except that the applicant, or any affected person who has intervened in the contested case before the department, may seek judicial review as provided in sections 84-917 to 84-919.

**Source:** Laws 1996, LB 1188, § 6; Laws 1997, LB 798, § 2.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**Uniform Declaratory Judgments Act**, see section 25-21,164.

**71-20,108 Review of application; Attorney General; considerations.**

If the Attorney General determines to review the application, he or she shall approve the application unless he or she finds that the acquisition is not in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in subdivision (8) of this section. In determining whether the acquisition meets such criteria under the Nonprofit Hospital Sale Act, the Attorney General shall consider:

- (1) Whether the acquisition is permitted under the Nebraska Nonprofit Corporation Act and other laws of Nebraska governing nonprofit entities, trusts, or charities;
- (2) Whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;
- (3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;
- (4) Whether conflict of interest was disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;
- (5) Whether the seller will receive reasonably fair value for its assets. The Attorney General may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;
- (6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;
- (7) Whether any management contract under the acquisition is for reasonably fair value;
- (8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and
- (9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation if the hospital is subsequently sold to, acquired by, or merged with another entity has been retained.

**Source:** Laws 1996, LB 1188, § 7.

**Cross References**

Nebraska Nonprofit Corporation Act, see section 21-1901.

**71-20,109 Review of application; department; considerations.**

In making a decision whether to approve or disapprove an application, the department shall consider:

- (1) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;
- (2) Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the seller or its successor nonprofit corporation or foundation to provide such health care may be considered in evaluating compliance with this commitment; and
- (3) If health care providers will be offered the opportunity to invest or own an interest in the purchaser or a related entity to the purchaser, whether procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of such procedures or safeguards.



This section does not apply higher standards to hospitals covered by the Nonprofit Hospital Sale Act than those applicable to hospitals not covered by the act.

**Source:** Laws 1996, LB 1188, § 8.

**71-20,110 Noncompliance with commitment to affected community; revocation of license; when.**

If the department receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under section 71-20,109, the department shall hold a hearing upon ten days' notice to the affected parties. If after such hearing the department determines that the information is true, it may institute proceedings to revoke the license issued to the purchaser.

**Source:** Laws 1996, LB 1188, § 9.

**71-20,111 Attorney General; powers to ensure compliance.**

The Attorney General shall have the authority to ensure compliance with commitments which inure to the public interest.

**Source:** Laws 1996, LB 1188, § 10.

**71-20,112 Licensure; issuance, renewal, revocation, or suspension; when; section, how construed.**

No license to operate a hospital may be issued or renewed by the department pursuant to the Health Care Facility Licensure Act or any other state statute, and a license which has been issued shall be subject to revocation or suspension, if:

- (1) There is an acquisition of a hospital without first having received the approval of the department under the Nonprofit Hospital Sale Act;
- (2) There is an acquisition of a hospital without the approval of the Attorney General, if the Attorney General determines to review the application under the act;
- (3) There is an acquisition of a hospital and the Attorney General disapproves the acquisition and there is a judicial determination under the Uniform Declaratory Judgments Act that the acquisition is not in the public interest; or
- (4) The hospital is not fulfilling its commitment under section 71-20,109 or is not following procedures of safeguards committed to under subdivision (3) of such section.

This section does not limit the right to a hearing under section 71-454 or the right of appeal for a hospital from such decision as provided in section 71-455.

**Source:** Laws 1996, LB 1188, § 11; Laws 2000, LB 819, § 105.

**Cross References**

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

**Uniform Declaratory Judgments Act**, see section 25-21,164.

**71-20,113 Applicability of act.**

Any acquisition of a hospital before April 16, 1996, and any acquisition in which an application for a certificate of need under the Nebraska Health Care Certificate of Need Act has been granted by the Department of Health and

Human Services Regulation and Licensure before April 16, 1996, is not subject to the Nonprofit Hospital Sale Act.

**Source:** Laws 1996, LB 1188, § 12; Laws 2007, LB296, § 529.

Cross References

Nebraska Health Care Certificate of Need Act, see section 71-5801.

**71-20,114 Authority of Attorney General; act; how construed.**

No provision of the Nonprofit Hospital Sale Act shall derogate from the common-law or statutory authority of the Attorney General.

**Source:** Laws 1996, LB 1188, § 13.

(m) ASSISTED-LIVING FACILITIES

**71-20,115 Transferred to section 71-460.**

**71-20,116 Transferred to section 71-461.**

**71-20,117 Repealed. Laws 2000, LB 819, § 162.**

(n) CRITICAL ACCESS HOSPITALS

**71-20,118 Repealed. Laws 2000, LB 819, § 162.**

**71-20,119 Repealed. Laws 2000, LB 819, § 162.**

(o) VISITATION PRIVILEGES

**71-20,120 Visitation privileges; designation by patient.**

A hospital patient who is nineteen years of age or older or an emancipated minor may designate at any time, orally or in writing, up to five individuals not legally related by marriage or blood to the patient whom the patient wishes to be given the same visitation privileges as an immediate family member of such patient. An individual so designated shall have the same visitation privileges as an immediate family member of such patient. The patient may rescind the designation or designations at any time, orally or in writing. Any designation or rescission made under this section shall be noted on the patient's medical records at such hospital. For purposes of this section, medical records means the hospital's record of a patient's health history and treatment rendered.

**Source:** Laws 2002, LB 1062, § 51.

(p) DISPOSITION OF REMAINS OF CHILD BORN DEAD

**71-20,121 Disposition of remains of child born dead; hospital; duties.**

(1) Every hospital licensed under the Health Care Facility Licensure Act shall maintain a written policy for the disposition of the remains of a child born dead at such hospital. A parent of such child shall have the right to direct the disposition of such remains, except that disposition may be made by the hospital if no such direction is given by a parent within fourteen days following the delivery of such remains. Such policy and such disposition shall comply with all applicable provisions of state and federal law. Upon the delivery of a

child born dead, the hospital shall notify at least one parent of such parents' right to direct the disposition of the remains of such child and shall provide at least one parent with a copy of its policy with respect to such disposition.

(2) For purposes of this section, child born dead means a child at any stage of gestation (a) who has died in utero, (b) whose remains have been removed from the uterus of the mother, for whom pregnancy has been confirmed prior to such removal, and (c) whose remains are identified with the naked eye at the time of such removal by the attending physician or upon subsequent pathological examination if requested by a parent. This section shall not apply to the performance of an elective abortion.

(3) Except as otherwise provided by law, nothing in this section shall be interpreted to prohibit any hospital from providing additional notification and assistance to the parent of a child born dead at such hospital relating to the disposition of the remains of such child, even if such remains cannot be identified with the naked eye at the time of delivery or upon subsequent pathological examination.

**Source:** Laws 2003, LB 95, § 38.

**Cross References**

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

**ARTICLE 21**

**INFANTS**

**Cross References**

**Autopsy requirement**, see sections 23-1824, 71-605, and 71-605.04.

**Compassion and Care for Medically Challenging Pregnancies Act**, see section 71-5001.

**Educational packet**, contents, see section 79-1902.

**Infant Hearing Act**, see section 71-4734.

**Providers of child care**, training requirements, see section 43-2606.

**Screening tests**, see section 71-519.

**Section**

71-2101. Sudden infant death syndrome; legislative findings.

71-2102. Shaken baby syndrome; legislative findings.

71-2103. Information for parents of newborn child; requirements.

71-2104. Public awareness activities; duties.

**71-2101 Sudden infant death syndrome; legislative findings.**

The Legislature finds that sudden infant death syndrome is the sudden, unexpected death of an apparently healthy infant less than one year of age that remains unexplained after the performance of a complete postmortem investigation, including an autopsy, an examination of the scene of death, and a review of the medical history. The Legislature further finds that, despite the success of prevention efforts, sudden infant death syndrome has been the second leading cause of death for infants in Nebraska for the last twenty years. Although there are no known ways to prevent sudden infant death syndrome in all cases, there are steps that parents and caregivers can take to reduce the risk of sudden infant death. The Legislature further finds and declares that there is a present and growing need to provide additional programs aimed at reducing the number of cases of sudden infant death syndrome in Nebraska.

**Source:** Laws 2006, LB 994, § 147.

**71-2102 Shaken baby syndrome; legislative findings.**

The Legislature finds that shaken baby syndrome is the medical term used to describe the violent shaking of an infant or child and the injuries or other results sustained by the infant or child. The Legislature further finds that shaken baby syndrome may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that these injuries can include brain swelling and damage, subdural hemorrhage, intellectual disability, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of shaken baby syndrome in Nebraska.

**Source:** Laws 2006, LB 994, § 148; Laws 2013, LB23, § 33.

**71-2103 Information for parents of newborn child; requirements.**

Every hospital, birth center, or other medical facility that discharges a newborn child shall request that each maternity patient and father of a newborn child, if available, view a video presentation and read printed materials, approved by the Department of Health and Human Services, on the dangers of shaking infants and children, the symptoms of shaken baby syndrome, the dangers associated with rough handling or the striking of an infant, safety measures which can be taken to prevent sudden infant death, and the dangers associated with infants sleeping in the same bed with other children or adults. After viewing the presentation and reading the materials or upon a refusal to do so, the hospital, birth center, or other medical facility shall request that the mother and father, if available, sign a form stating that he or she has viewed and read or refused to view and read the presentation and materials. Such presentation, materials, and forms may be provided by the department.

**Source:** Laws 2006, LB 994, § 149.

**71-2104 Public awareness activities; duties.**

The Department of Health and Human Services shall conduct public awareness activities designed to promote the prevention of sudden infant death syndrome and shaken baby syndrome. The public awareness activities may include, but not be limited to, public service announcements, information kits and brochures, and the promotion of preventive telephone hotlines.

**Source:** Laws 2006, LB 994, § 150.

**ARTICLE 22**

**MATERNAL AND CHILD HEALTH**

Section

- 71-2201. Maternal and Child Health and Public Health Work Fund; created; investment.
- 71-2202. Maternal and Child Health and Public Health Work Fund; administration.
- 71-2203. Maternal and Child Health and Public Health Work Fund; disbursements; how made.
- 71-2204. Maternal and Child Health and Public Health Work Fund; federal aid; acceptance.
- 71-2205. Construction of sections.
- 71-2206. Repealed. Laws 1997, LB 307, § 236.
- 71-2207. Maternal and child health funds; how used.
- 71-2208. Maternal and child health; reports by Department of Health and Human Services; to whom made.

Section

- 71-2209. Repealed. Laws 1989, LB 344, § 35.
- 71-2210. Repealed. Laws 1989, LB 344, § 35.
- 71-2211. Repealed. Laws 1989, LB 344, § 35.
- 71-2212. Repealed. Laws 1989, LB 344, § 35.
- 71-2213. Repealed. Laws 1989, LB 344, § 35.
- 71-2214. Repealed. Laws 1989, LB 344, § 35.
- 71-2215. Repealed. Laws 1989, LB 344, § 35.
- 71-2216. Repealed. Laws 1989, LB 344, § 35.
- 71-2217. Repealed. Laws 1989, LB 344, § 35.
- 71-2218. Repealed. Laws 1989, LB 344, § 35.
- 71-2219. Repealed. Laws 1989, LB 344, § 35.
- 71-2220. Repealed. Laws 1989, LB 344, § 35.
- 71-2221. Repealed. Laws 1989, LB 344, § 35.
- 71-2222. Repealed. Laws 1989, LB 344, § 35.
- 71-2223. Repealed. Laws 1989, LB 344, § 35.
- 71-2224. Repealed. Laws 1989, LB 344, § 35.
- 71-2225. Terms, defined.
- 71-2226. State CSF program; authorized; department; powers.
- 71-2227. State WIC program; authorized; department; powers.
- 71-2228. Obtaining benefits; prohibited acts; violation; penalty.
- 71-2229. Using benefits; prohibited acts; violation; penalty.
- 71-2230. Attorney General; enforcement.

**71-2201 Maternal and Child Health and Public Health Work Fund; created; investment.**

There is created a Maternal and Child Health and Public Health Work Fund in the treasury of the State of Nebraska, to be administered by the Department of Health and Human Services for maternal and child health and for public health work, as provided by law. 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 1935, Spec. Sess., c. 29, § 1, p. 178; C.S.Supp.,1941, § 81-5718; R.S.1943, § 81-609; Laws 1969, c. 584, § 72, p. 2388; Laws 1995, LB 7, § 76; Laws 1996, LB 1044, § 613; Laws 2007, LB296, § 530.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.  
 Nebraska State Funds Investment Act, see section 72-1260.

**71-2202 Maternal and Child Health and Public Health Work Fund; administration.**

The Department of Health and Human Services shall administer the fund for maternal and child health and public health services throughout the State of Nebraska. Seventy-five percent of the fund shall be used for maternal and child health activities in this state, and twenty-five percent shall be used for public health work, if such amounts are needed therefor.

**Source:** Laws 1935, Spec. Sess., c. 29, § 2, p. 178; C.S.Supp.,1941, § 81-5719; R.S.1943, § 81-610; Laws 1996, LB 1044, § 614; Laws 2007, LB296, § 531.

**71-2203 Maternal and Child Health and Public Health Work Fund; disbursements; how made.**

Disbursements from the fund referred to in section 71-2201 shall be made upon vouchers signed by an authorized representative of the Department of Health and Human Services and warrants approved by the Director of Administrative Services.

**Source:** Laws 1935, Spec. Sess., c. 29, § 4, p. 178; C.S.Supp.,1941, § 81-5721; R.S.1943, § 81-611; Laws 1996, LB 1044, § 615; Laws 2007, LB296, § 532.

**71-2204 Maternal and Child Health and Public Health Work Fund; federal aid; acceptance.**

The fund created by section 71-2201 may be augmented by grants from the United States and by such additional appropriations as may be made by law.

**Source:** Laws 1935, Spec. Sess., c. 29, § 5, p. 178; C.S.Supp.,1941, § 81-5722; R.S.1943, § 81-612.

**71-2205 Construction of sections.**

Sections 71-2205 to 71-2208 shall be construed to be new, independent and supplemental legislation with reference to the subjects of maternal and child welfare.

**Source:** Laws 1935, Spec. Sess., c. 31, § 1, p. 190; C.S.Supp.,1941, § 81-5723; R.S.1943, § 81-613.

**71-2206 Repealed. Laws 1997, LB 307, § 236.**

**71-2207 Maternal and child health funds; how used.**

The funds allocated for maternal and child health in this state shall be used and distributed subject to the supervision of the Department of Health and Human Services: (1) For promoting the health of mothers and children, especially in rural areas, suffering from some economic distress; (2) for the establishment, extension, and improvement of local maternal and child health services to be administered by local child health units; and (3) for demonstration services in needy areas and among groups in special need. The department shall also cooperate with licensed physicians and surgeons and with nursing and welfare groups and organizations for the purposes herein expressed.

**Source:** Laws 1935, Spec. Sess., c. 31, § 3, p. 190; C.S.Supp.,1941, § 81-5725; R.S.1943, § 81-615; Laws 1996, LB 1044, § 617; Laws 2007, LB296, § 533.

**71-2208 Maternal and child health; reports by Department of Health and Human Services; to whom made.**

The Department of Health and Human Services shall make quarterly or more frequent reports of the administration of sections 71-2205 to 71-2208, and all expenditures thereunder, to the Chief of the Children's Bureau of the United States Department of Labor, and shall comply with requests for information from the Secretary of Labor of the United States or his or her agencies, if federal funds are granted to this state for the purposes mentioned in such sections.

**Source:** Laws 1935, Spec. Sess., c. 31, § 4, p. 190; C.S.Supp.,1941, § 81-5726; R.S.1943, § 81-616; Laws 1967, c. 437, § 2, p. 1344; Laws 1996, LB 1044, § 618; Laws 2007, LB296, § 534.

**71-2209 Repealed. Laws 1989, LB 344, § 35.**

**71-2210 Repealed. Laws 1989, LB 344, § 35.**

**71-2211 Repealed. Laws 1989, LB 344, § 35.**

**71-2212 Repealed. Laws 1989, LB 344, § 35.**

**71-2213 Repealed. Laws 1989, LB 344, § 35.**

**71-2214 Repealed. Laws 1989, LB 344, § 35.**

**71-2215 Repealed. Laws 1989, LB 344, § 35.**

**71-2216 Repealed. Laws 1989, LB 344, § 35.**

**71-2217 Repealed. Laws 1989, LB 344, § 35.**

**71-2218 Repealed. Laws 1989, LB 344, § 35.**

**71-2219 Repealed. Laws 1989, LB 344, § 35.**

**71-2220 Repealed. Laws 1989, LB 344, § 35.**

**71-2221 Repealed. Laws 1989, LB 344, § 35.**

**71-2222 Repealed. Laws 1989, LB 344, § 35.**

**71-2223 Repealed. Laws 1989, LB 344, § 35.**

**71-2224 Repealed. Laws 1989, LB 344, § 35.**

**71-2225 Terms, defined.**

For purposes of sections 71-2225 to 71-2230:

(1) CSF program shall mean the Commodity Supplemental Food Program administered by the United States Department of Agriculture or its successor;

(2) Food instrument shall mean a voucher, check, coupon, or other document used to obtain supplemental foods;

(3) Supplemental foods shall mean (a) foods containing nutrients determined to be beneficial for infants, children, and pregnant, breast-feeding, or postpartum women as prescribed by the United States Department of Agriculture for use in the WIC program and (b) foods donated by the United States Department of Agriculture for use in the CSF program; and

(4) WIC program shall mean the Special Supplemental Nutrition Program for Women, Infants, and Children as administered by the United States Department of Agriculture or its successor.

**Source:** Laws 1987, LB 643, § 17; Laws 1989, LB 344, § 21; Laws 2006, LB 994, § 102.

**71-2226 State CSF program; authorized; department; powers.**

The Department of Health and Human Services is authorized to have a state CSF program to protect the health and welfare of the citizens of Nebraska by providing nutritious foods donated for such program by the United States Department of Agriculture, nutrition education, and such other benefits as are available to women, infants, children, and elderly persons in Nebraska who are

low income and vulnerable to malnutrition as long as federal funds are available from the CSF program and are granted to the department.

To the extent consistent with state law, the Department of Health and Human Services may establish, operate, and maintain the program in a way that will qualify it to receive federal funds and that is uniform with United States Department of Agriculture's standards, enter into agreements with the federal government to establish a CSF program, adopt and promulgate rules and regulations to implement a CSF program which are consistent with federal regulations and such other rules and regulations as may be necessary to implement the CSF program, and enter into such other agreements as may be necessary to implement the program within this state.

**Source:** Laws 1987, LB 643, § 18; Laws 1989, LB 344, § 22; Laws 1996, LB 1044, § 619.

**71-2227 State WIC program; authorized; department; powers.**

The Department of Health and Human Services is authorized to have a state WIC program to protect the health and welfare of citizens of Nebraska by providing nutritional supplemental foods and nutrition education to women, infants, and children who are low income and determined to be at nutritional risk as long as federal funds are available from the WIC program and are granted to the department.

To the extent consistent with state law, the department may establish, operate, and maintain the program in a way that will qualify it to receive federal funds and that is uniform with United States Department of Agriculture's standards, enter into agreements with the federal government to establish a WIC program, adopt and promulgate rules and regulations to implement a WIC program which are consistent with federal regulations and such other rules and regulations as may be necessary to implement the WIC program, and enter into such other agreements as may be necessary to implement the program within this state.

**Source:** Laws 1987, LB 643, § 19; Laws 1989, LB 344, § 23; Laws 1996, LB 1044, § 620.

**71-2228 Obtaining benefits; prohibited acts; violation; penalty.**

Any person who by means of a willfully false statement or representation, by impersonation, or by other device obtains or attempts to obtain or aids or abets any person to obtain or to attempt to obtain (1) a food instrument to which he, she, or it is not entitled, (2) any supplemental foods to which such person is not entitled, or (3) any other benefit administered by the Department of Health and Human Services under sections 71-2226 and 71-2227 commits an offense and shall, upon conviction, be punished as follows: (a) If the aggregate value of all funds and other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class IV misdemeanor; (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more but less than one thousand five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (c) if the aggregate value of all funds and other benefits



obtained or attempted to be obtained is one thousand five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

**Source:** Laws 1987, LB 643, § 20; Laws 1989, LB 344, § 24; Laws 1996, LB 1044, § 621; Laws 2015, LB605, § 81.

**71-2229 Using benefits; prohibited acts; violation; penalty.**

(1) A person commits an offense if he, she, or it knowingly and unlawfully uses, alters, or transfers a food instrument or supplemental food. An offense under this subsection shall be a Class IV misdemeanor if the value of the food instrument or benefit is less than five hundred dollars, shall be a Class III misdemeanor if the value of the food instrument or benefit is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value of the food instrument or benefit is one thousand five hundred dollars or more.

(2) A person commits an offense if he, she, or it (a) knowingly and unlawfully possesses a food instrument or supplemental food, (b) knowingly and unlawfully redeems a food instrument, (c) knowingly falsifies or misapplies a food instrument, or (d) fraudulently obtains a food instrument. An offense under this subsection shall be a Class IV misdemeanor if the value of the food instrument or benefit is less than five hundred dollars, shall be a Class III misdemeanor if the value of the food instrument or benefit is five hundred dollars or more but less than one thousand five hundred dollars, and shall be a Class IV felony if the value of the food instrument or benefit is one thousand five hundred dollars or more.

(3) A person commits an offense if he, she, or it knowingly and unlawfully possesses a blank authorization to participate in the WIC program or CSF program. An offense under this subsection shall be a Class IV felony.

(4) When food instruments or supplemental foods are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

**Source:** Laws 1987, LB 643, § 21; Laws 1989, LB 344, § 25; Laws 2015, LB605, § 82.

**71-2230 Attorney General; enforcement.**

The Attorney General may take such civil action as may be necessary to enforce the provisions of sections 71-2226 to 71-2229.

**Source:** Laws 1987, LB 643, § 22; Laws 1989, LB 344, § 26.

**ARTICLE 23**

**NEBRASKA PROSTITUTION INTERVENTION AND TREATMENT ACT**

**Cross References**

**Human Trafficking Victims Civil Remedy Act**, see section 25-21,297.

**Nebraska Behavioral Health Services Act**, see section 71-801.

**Nebraska Strengthening Families Act**, see section 43-4701.

**Section**

71-2301. Act, how cited.

71-2302. Legislative findings.

71-2303. Legislative intent.

71-2304. Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties.

Section  
71-2305. Rules and regulations.

**71-2301 Act, how cited.**

Sections 71-2301 to 71-2305 shall be known and may be cited as the Nebraska Prostitution Intervention and Treatment Act.

**Source:** Laws 2006, LB 1086, § 1.

**71-2302 Legislative findings.**

The Legislature finds that:

(1) Increasing prostitution in Nebraska has become harmful to communities and neighborhoods, often contributing to both incidents of crime and fear of crime. Prostitution depletes local law enforcement resources and leads to a reduction in the quality of life for the residents and businesses that are within close geographic proximity to concentrated areas of prostitution. Prostitution-related activities create noise, litter, and harassment of residents and businesses and promote declining property values. Residents and businesses in areas within close geographic proximity to prostitution-related activity often feel threatened when solicitors proposition on their streets or when prostitution-related activities are performed in parked cars, empty parking lots, or alleyways;

(2) Many prostitutes use prostitution to support drug and alcohol addictions. In addition, many prostitutes suffer from significant mental health disorders that lead to increased dependency on drugs and alcohol. When panderers are involved, the prostitutes are often subject to physical and psychological abuse;

(3) Solicitors of prostitution are equally contributing sexual offenders;

(4) Resources are needed to coordinate and deliver an array of community-based services to address issues related to prostitution, including, but not limited to, lifestyle choices, substance abuse, mental health disorders, workforce assessment and preparation, education, and other community-based services;

(5) A coordinated array of community-based services delivered to individuals engaged in prostitution-related activity can mitigate individual lifestyle choices and break the cycle of prostitution; and

(6) The quality of life for residents and businesses can be drastically improved when the prevalence of prostitution-related activity is significantly reduced or removed within residential and business areas.

**Source:** Laws 2006, LB 1086, § 2.

**71-2303 Legislative intent.**

It is the intent of the Legislature to provide funds for education and treatment of individuals involved in prostitution-related activities.

**Source:** Laws 2006, LB 1086, § 3.

**71-2304 Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties.**

## NEBRASKA PROSTITUTION INTERVENTION AND TREATMENT ACT § 71-2305

(1) The Legislature shall appropriate funds to create a coordinated program of education and treatment for individuals that participate in prostitution-related activities as described in section 28-801.

(2) The Department of Health and Human Services, in consultation with the regional behavioral health authorities, shall distribute funds to regional behavioral health authorities that can demonstrate to the department a high incidence of prostitution within the behavioral health region. The department may consider the following criteria for regional behavioral health funding under this section:

(a) The number of criminal convictions for prostitution-related activities within the counties that comprise the regional behavioral health authority;

(b) Evidence that prostitution-related activities are impacting residential areas and businesses and the quality of life of residents in such areas and businesses is negatively impacted;

(c) The amount of local law enforcement resources devoted specifically to curtailing prostitution-related activity;

(d) Evidence that the regional behavioral health authorities consulted with recognized neighborhood and business associations within geographic proximity to concentrated areas of prostitution; and

(e) The amount of local subdivision treatment funding.

Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such education and treatment. Such qualifying entities may obtain additional funding from cities and counties to provide a coordinated program of treatment and education for individuals that participate in prostitution-related activities.

**Source:** Laws 2006, LB 1086, § 4; Laws 2007, LB296, § 535.

### 71-2305 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Nebraska Prostitution Intervention and Treatment Act.

**Source:** Laws 2006, LB 1086, § 5; Laws 2007, LB296, § 536.

## ARTICLE 24

### DRUGS

#### Cross References

**Anabolic steroids**, students and public employees, prohibited acts, see sections 48-232, 48-233, and 79-296.

**Controlled substances**, regulation of, Uniform Controlled Substances Act, see section 28-401.01.

**Delegated dispensing permit**, see sections 38-2872 to 38-2889.

**Driving motor vehicle while under influence of drugs**, penalty, see section 60-6,196.

**Generic drugs**, Nebraska Drug Product Selection Act, see section 38-28,108.

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

**Health insurer**, choice of pharmacy, see section 44-783.

**Mail-order pharmacies**, insurance reimbursement, see section 44-513.02.

**Medical assistance program**, see section 68-901 et seq.

**Medication Aide Act**, see section 71-6718.

**Medicines and drugs**, prohibited acts, see Chapter 28, article 4.

**Nebraska Drug Product Selection Act**, see section 38-28,108.

**Paraphernalia**, prohibited acts, see sections 28-439 to 28-444.

**Pharmacy Practice Act**, see section 38-2801.

**Rules and regulations**, see section 38-2899.

**Uniform Controlled Substances Act**, see section 28-401.01.

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

**Veterinary Drug Distribution Licensing Act**, see section 71-8901.

**Wholesale Drug Distributor Licensing Act**, see section 71-7427.

## PUBLIC HEALTH AND WELFARE

### (a) ADULTERATION OR MISBRANDING

Section	
71-2401.	Transferred to section 71-2461.
71-2402.	Transferred to section 71-2470.
71-2403.	Repealed. Laws 2015, LB 37, § 93.
71-2404.	Transferred to section 71-2480.
71-2405.	Transferred to section 71-2481.

### (b) MAIL SERVICE PHARMACY LICENSURE ACT

71-2406.	Mail Service Pharmacy Licensure Act; act, how cited.
71-2407.	Mail service pharmacy license; requirements; fee.
71-2408.	Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties.
71-2409.	Rules and regulations.

### (c) EMERGENCY BOX DRUG ACT

71-2410.	Emergency Box Drug Act; act, how cited.
71-2411.	Terms, defined.
71-2412.	Long-term care facility; emergency boxes; use; conditions.
71-2413.	Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.
71-2414.	Department; powers; grounds for disciplinary action.
71-2415.	Repealed. Laws 2009, LB 195, § 111.
71-2416.	Violations; department; powers; prohibited acts; violation; penalty.
71-2417.	Controlled substance; exemption.

### (d) PAIN MANAGEMENT

71-2418.	Legislative findings.
71-2419.	Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation.
71-2420.	Board of Medicine and Surgery; duties.

### (e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421.	Transferred to section 38-28,107.
----------	-----------------------------------

### (f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2422.	Cancer Drug Repository Program Act; act, how cited.
71-2423.	Terms, defined.
71-2424.	Cancer drug repository program; established.
71-2425.	Cancer drug donation.
71-2426.	Cancer drug; accepted or dispensed; conditions.
71-2427.	Participant; duties; fee authorized.
71-2428.	Immunity.
71-2429.	Rules and regulations.
71-2430.	Participant registry.

### (g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

71-2431.	Community health center; relabeling and redispensing prescription drugs; requirements.
----------	--

### (h) CLANDESTINE DRUG LABS

71-2432.	Terms, defined.
71-2433.	Property owner; law enforcement agency; Nebraska State Patrol; duties.
71-2434.	Local public health department; powers and duties; fees; release of property for human habitation; civil penalty.
71-2435.	Leased property; termination of lease; notice.

### (i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

71-2436.	Immunosuppressant Drug Repository Program Act; act, how cited.
71-2437.	Terms, defined.

## DRUGS

### Section

- 71-2438. Immunosuppressant drug repository program; established.
- 71-2439. Immunosuppressant drug donation.
- 71-2440. Immunosuppressant drug; accepted or dispensed; conditions.
- 71-2441. Participant; duties; resale prohibited.
- 71-2442. Rules and regulations.
- 71-2443. Immunity.

### (j) AUTOMATED MEDICATION SYSTEMS ACT

- 71-2444. Automated Medication Systems Act; act, how cited.
- 71-2445. Terms, defined.
- 71-2446. Automated machine prohibited.
- 71-2447. Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.
- 71-2448. Prescription medication distribution machine; requirements; location.
- 71-2449. Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.
- 71-2450. Pharmacist providing pharmacist remote order entry; requirements.
- 71-2451. Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.
- 71-2451.01. Management of long-term care facility; prohibited acts.
- 71-2452. Violations; disciplinary action.

### (k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

- 71-2453. Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.

### (l) PRESCRIPTION DRUG MONITORING PROGRAM

- 71-2454. Prescription drug monitoring; system established; provisions included; not public records.
- 71-2454.01. Veterinary Prescription Monitoring Program Task Force; created; duties; members; meeting; report.
- 71-2455. Prescription drug monitoring; Department of Health and Human Services; duties; powers.
- 71-2456. Prescription Drug Monitoring Program Fund; created; investment.

### (m) PRESCRIPTION DRUG SAFETY ACT

- 71-2457. Prescription Drug Safety Act; act, how cited.
- 71-2458. Definitions, where found.
- 71-2459. Administer, defined.
- 71-2460. Administration, defined.
- 71-2461. Adulterated drug, defined.
- 71-2462. Chart order, defined.
- 71-2463. Compounding, defined.
- 71-2464. Controlled substance, defined.
- 71-2465. Dispense or dispensing, defined.
- 71-2466. Distribute, defined.
- 71-2467. Drugs, medicines, and medicinal substances, defined.
- 71-2468. Labeling, defined.
- 71-2469. Medical order, defined.
- 71-2470. Misbranded drug, defined.
- 71-2471. Pharmacist, defined.
- 71-2472. Pharmacy, defined.
- 71-2473. Practitioner, defined.
- 71-2474. Prescribe, defined.
- 71-2475. Prescription, defined.
- 71-2476. Prescription drug or device or legend drug or device, defined.
- 71-2477. Act; how construed; practitioner; duties; compound or reconstitute drug; duties.
- 71-2478. Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.

§ 71-2401

PUBLIC HEALTH AND WELFARE

Section	
71-2479.	Legend drug not a controlled substance; prescription; retention; label; contents.
71-2480.	Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.
71-2481.	Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.
71-2482.	Drugs; violations; penalties.
71-2483.	Communication authorized.

(a) ADULTERATION OR MISBRANDING

**71-2401 Transferred to section 71-2461.**

**71-2402 Transferred to section 71-2470.**

**71-2403 Repealed. Laws 2015, LB 37, § 93.**

**71-2404 Transferred to section 71-2480.**

**71-2405 Transferred to section 71-2481.**

(b) MAIL SERVICE PHARMACY LICENSURE ACT

**71-2406 Mail Service Pharmacy Licensure Act; act, how cited.**

Sections 71-2406 to 71-2409 shall be known and may be cited as the Mail Service Pharmacy Licensure Act.

**Source:** Laws 1988, LB 350, § 1; Laws 2003, LB 667, § 7.

**71-2407 Mail service pharmacy license; requirements; fee.**

(1) Any person operating a mail service pharmacy outside of the State of Nebraska shall obtain a mail service pharmacy license prior to shipping, mailing, or in any manner delivering dispensed prescription drugs as defined in section 38-2841 into the State of Nebraska.

(2) To be qualified to hold a mail service pharmacy license, a person shall:

(a) Hold a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(b) Be located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements of the Health Care Facility Licensure Act;

(c) Designate the Secretary of State as his, her, or its agent for service of process in this state; and

(d) Employ on a full-time basis at least one pharmacist who holds a current unrestricted pharmacist license issued under the Uniform Credentialing Act who shall be responsible for compliance by the mail service pharmacy with the Mail Service Pharmacy Licensure Act. The mail service pharmacy shall notify the department when such pharmacist is no longer employed by such pharmacy.

(3) To obtain a mail service pharmacy license, a person shall:

- (a) File an application on a form developed by the department; and
- (b) Pay a fee equivalent to the fee for a pharmacy license in the State of Nebraska pursuant to section 71-434.
- (4) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

**Source:** Laws 1988, LB 350, § 2; Laws 1993, LB 536, § 81; Laws 1996, LB 1044, § 622; Laws 1999, LB 594, § 58; Laws 1999, LB 828, § 163; Laws 2001, LB 398, § 69; Laws 2003, LB 667, § 8; Laws 2007, LB296, § 537; Laws 2007, LB463, § 1193.

**Cross References**

**Health Care Facility Licensure Act**, see section 71-401.  
**Uniform Credentialing Act**, see section 38-101.

**71-2408 Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties.**

(1) The Department of Health and Human Services, after notice and an opportunity for a hearing, may deny, refuse renewal of, revoke, or otherwise discipline or restrict the license of a mail service pharmacy for (a) any discipline of the pharmacy license held by such pharmacy in another state pursuant to subdivision (2)(a) of section 71-2407, (b) any violation of the Mail Service Pharmacy Licensure Act or rules and regulations adopted and promulgated under the act, or (c) conduct by such pharmacy which in this state presents a threat to the public health and safety or a danger of death or physical harm.

(2) The department, upon the recommendation of the Board of Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Pharmacy Licensure Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

**Source:** Laws 1988, LB 350, § 3; Laws 1996, LB 1044, § 623; Laws 1999, LB 828, § 164; Laws 2003, LB 667, § 9; Laws 2007, LB296, § 538.

**71-2409 Rules and regulations.**

The Department of Health and Human Services shall, upon the recommendation of the Board of Pharmacy, adopt and promulgate rules and regulations necessary to carry out the Mail Service Pharmacy Licensure Act.

**Source:** Laws 1988, LB 350, § 4; Laws 1996, LB 1044, § 624; Laws 1999, LB 828, § 165; Laws 2003, LB 667, § 10; Laws 2007, LB296, § 539.

**Cross References**

**Minimum standards for rules and regulations**, see section 38-2899.

(c) EMERGENCY BOX DRUG ACT

**71-2410 Emergency Box Drug Act; act, how cited.**

Sections 71-2410 to 71-2417 shall be known and may be cited as the Emergency Box Drug Act.

**Source:** Laws 1994, LB 1210, § 182.

**71-2411 Terms, defined.**

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

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

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

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

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

**Source:** Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69; Laws 2013, LB23, § 34; Laws 2018, LB1034, § 63.

Effective date July 19, 2018.

**Cross References**

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

**71-2412 Long-term care facility; emergency boxes; use; conditions.**

Drugs may be administered to residents of a long-term care facility by authorized personnel of the long-term care facility from the contents of emergency boxes located within such long-term care facility if such drugs and boxes meet all of the following requirements:

(1) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacy with the seal on



such emergency box to be of such a nature that it can be easily identified if it has been broken;

(2) Emergency boxes shall be stored in a medication room or other secured area within the long-term care facility. Only authorized personnel of the long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacy;

(4) All emergency boxes shall be inspected by a pharmacist designated by the supplying pharmacy at least once every thirty days or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the long-term care facility for a period of five years; and

(5) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying pharmacy and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date.

For purposes of the Emergency Box Drug Act, calculated expiration date has the same meaning as in section 38-2808.01.

**Source:** Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195; Laws 2009, LB195, § 70; Laws 2017, LB166, § 21.

**71-2413 Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.**

(1) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. The supplying pharmacy shall maintain a list of emergency box drugs which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacy shall obtain a receipt upon delivery of the emergency box to the long-term care facility signed by the director of nursing of the long-term care facility or his or her designee which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacy for a period of five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying pharmacy and shall be recorded on the resident's medical record by authorized personnel of the long-

term care facility. Removal of any drug from an emergency box by authorized personnel of the long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature or signatures of authorized personnel. The form shall be maintained at the long-term care facility for a period of five years from the date of removal with a copy of the form to be provided to the supplying pharmacy.

(3) Whenever an emergency box is opened, the supplying pharmacy shall be notified by the charge nurse or the director of nursing of the long-term care facility within twenty-four hours and a pharmacist designated by the supplying pharmacy shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box.

(4) Upon the expiration of any drug in the emergency box, the supplying pharmacy shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. Emergency box drugs shall be considered inventory of the supplying pharmacy until such time as they are removed for administration.

(5) Authorized personnel of the long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility shall be recorded and maintained at the long-term care facility for a period of five years from the date of examination.

(6) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

**Source:** Laws 1994, LB 1210, § 185; Laws 1999, LB 828, § 166; Laws 2001, LB 398, § 71; Laws 2009, LB195, § 71; Laws 2017, LB166, § 22.

**71-2414 Department; powers; grounds for disciplinary action.**

The department shall have (1) the authority to inspect any emergency box and (2) access to the records of the supplying pharmacy and the long-term care facility for inspection. Refusal to allow the department to inspect an emergency box or to have access to records shall be grounds for a disciplinary action against the supplying pharmacy or the license of the long-term care facility.

**Source:** Laws 1994, LB 1210, § 186; Laws 2009, LB195, § 72.

**71-2415 Repealed. Laws 2009, LB 195, § 111.**

**71-2416 Violations; department; powers; prohibited acts; violation; penalty.**

(1) The department may limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box for any violation of the act. The taking of such action against the supplying pharmacy or the long-term care facility or both shall not prohibit the depart-

ment from taking other disciplinary actions against the supplying pharmacy or the long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility or to limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box, it shall send to the supplying pharmacy or the long-term care facility a notice of such determination. The notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacy or the long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying pharmacy or the long-term care facility shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacy or the long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacy or the long-term care facility shall not maintain an emergency box after its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department.

(5) Any person who commits any of the acts prohibited by the Emergency Box Drug Act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

**Source:** Laws 1994, LB 1210, § 188; Laws 1999, LB 828, § 167; Laws 2009, LB195, § 73.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **71-2417 Controlled substance; exemption.**

Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from subsection (3) of section 28-414.03.

**Source:** Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74; Laws 2014, LB811, § 27.

## (d) PAIN MANAGEMENT

**71-2418 Legislative findings.**

(1) The Legislature finds that many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of Nebraska. Principles of quality medical practice dictate that the people of Nebraska have access to appropriate and effective pain relief.

(2) The Legislature finds that the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain. The Legislature therefor encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including those patients who experience pain as a result of terminal illness.

(3) The Legislature finds that a physician should be able to prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

(4) The Legislature finds that a health care facility, hospice, or third-party payor should not forbid or restrict the use of controlled substances appropriately administered for the treatment of pain.

**Source:** Laws 1999, LB 226, § 1; Laws 2007, LB463, § 1196.

**71-2419 Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation.**

A physician licensed under the Medicine and Surgery Practice Act who prescribes, dispenses, or administers or a nurse licensed under the Nurse Practice Act or pharmacist licensed under the Pharmacy Practice Act who administers or dispenses a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline under the Uniform Credentialing Act or criminal prosecution under the Uniform Controlled Substances Act when: (1) In the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

**Source:** Laws 1999, LB 226, § 2; Laws 2001, LB 398, § 73; Laws 2007, LB463, § 1197.

**Cross References**

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

**Nurse Practice Act**, see section 38-2201.

**Pharmacy Practice Act**, see section 38-2801.

**Uniform Controlled Substances Act**, see section 28-401.01.

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

**71-2420 Board of Medicine and Surgery; duties.**

The Board of Medicine and Surgery shall adopt policies and guidelines for the treatment of pain to ensure that physicians who are engaged in the

appropriate treatment of pain are not subject to disciplinary action, and the board shall consider policies and guidelines developed by national organizations with expertise in pain management for this purpose.

**Source:** Laws 1999, LB 226, § 3; Laws 2007, LB463, § 1198.

(e) RETURN OF DISPENSED DRUGS AND DEVICES

**71-2421 Transferred to section 38-28,107.**

(f) CANCER DRUG REPOSITORY PROGRAM ACT

**71-2422 Cancer Drug Repository Program Act; act, how cited.**

Sections 71-2422 to 71-2430 shall be known and may be cited as the Cancer Drug Repository Program Act.

**Source:** Laws 2003, LB 756, § 1; Laws 2005, LB 331, § 1.

**71-2423 Terms, defined.**

For purposes of the Cancer Drug Repository Program Act:

- (1) Cancer drug means a prescription drug used to treat (a) cancer or its side effects or (b) the side effects of a prescription drug used to treat cancer or its side effects;
- (2) Department means the Department of Health and Human Services;
- (3) Health care facility has the definition found in section 71-413;
- (4) Health clinic has the definition found in section 71-416;
- (5) Hospital has the definition found in section 71-419;
- (6) Participant means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program and that accepts donated cancer drugs under the rules and regulations adopted and promulgated by the department for the program;
- (7) Pharmacy has the definition found in section 71-425;
- (8) Physician's office means the office of a person licensed to practice medicine and surgery or osteopathic medicine and surgery;
- (9) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe cancer drugs;
- (10) Prescription drug has the definition found in section 38-2841; and
- (11) Program means the cancer drug repository program established pursuant to section 71-2424.

**Source:** Laws 2003, LB 756, § 2; Laws 2005, LB 331, § 2; Laws 2007, LB296, § 541; Laws 2007, LB463, § 1200.

**Cross References**

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

**71-2424 Cancer drug repository program; established.**

The department shall establish a cancer drug repository program for accepting donated cancer drugs and dispensing such drugs to Nebraska residents. Participation in the program shall be voluntary.

**Source:** Laws 2003, LB 756, § 3.

**71-2425 Cancer drug donation.**

Any person or entity, including, but not limited to, a cancer drug manufacturer or health care facility, may donate cancer drugs to the program. Cancer drugs may be donated to a participant.

**Source:** Laws 2003, LB 756, § 4; Laws 2005, LB 331, § 3.

**71-2426 Cancer drug; accepted or dispensed; conditions.**

(1) A cancer drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. A cancer drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section. An injectable cancer drug may be accepted if it does not have temperature requirements other than controlled room temperature.

(2) A cancer drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, (c) such drug has expired while in the repository, or (d) such drug has restricted distribution by the federal Food and Drug Administration.

(3) Subject to limitations provided in this section, unused cancer drugs dispensed under the medical assistance program established pursuant to the Medical Assistance Act may be accepted and dispensed under the program.

**Source:** Laws 2003, LB 756, § 5; Laws 2005, LB 331, § 4; Laws 2006, LB 1116, § 1; Laws 2006, LB 1248, § 77; Laws 2015, LB37, § 74.

**Cross References**

**Medical Assistance Act**, see section 68-901.

**71-2427 Participant; duties; fee authorized.**

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated cancer drugs and shall inspect all such drugs prior to dispensing to determine if they are adulterated or misbranded as defined in section 71-2461 or 71-2470. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) A participant may charge a handling fee for distributing or dispensing cancer drugs under the program. Such fee shall be established in rules and regulations adopted and promulgated by the department. Cancer drugs donated under the program shall not be resold.

**Source:** Laws 2003, LB 756, § 6; Laws 2005, LB 331, § 5; Laws 2015, LB37, § 75.

**71-2428 Immunity.**

(1) Any person or entity, including a cancer drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs under the Cancer Drug Repository Program Act or rules and regulations adopted and promulgated under the act shall be immune from civil

or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Notwithstanding subsection (1) of this section, the donation of a cancer drug by a cancer drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such cancer drug manufacturer that would have existed but for the donation.

**Source:** Laws 2003, LB 756, § 7.

#### **71-2429 Rules and regulations.**

The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Cancer Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed;

(3) The maximum handling fee that may be charged by participants that accept and distribute or dispense donated cancer drugs;

(4)(a) Categories of cancer drugs that the program will accept for dispensing and (b) categories of cancer drugs that the program will not accept for dispensing and the reason that such drugs will not be accepted; and

(5) Maintenance and distribution of the participant registry established in section 71-2430.

**Source:** Laws 2003, LB 756, § 8; Laws 2005, LB 331, § 6; Laws 2006, LB 1116, § 2.

#### **71-2430 Participant registry.**

The department shall establish and maintain a participant registry for the program. The participant registry shall include the participant's name, address, and telephone number and shall identify whether the participant is a physician's office, a pharmacy, a hospital, or a health clinic. The department shall make the participant registry available to any person or entity wishing to donate cancer drugs to the program.

**Source:** Laws 2005, LB 331, § 7.

#### **(g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING**

##### **71-2431 Community health center; relabeling and redispensing prescription drugs; requirements.**

(1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription if:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing rests solely with the contracting pharmacist or pharmacy;

(b) The drug or device has been in the control of the community health center at all times;

(c) The drug or device is in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 38-2806;

(b) Calculated expiration date has the definition found in section 38-2884;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on May 7, 2005;

(d) Deliver or delivery has the definition found in section 38-2813;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Prescription has the definition found in section 38-2840; and

(g) Prescription drug or device has the definition found in section 38-2841.

(3) The Department of Health and Human Services, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 2005, LB 382, § 14; Laws 2007, LB296, § 542; Laws 2007, LB463, § 1201.

#### (h) CLANDESTINE DRUG LABS

##### **71-2432 Terms, defined.**

For purposes of sections 71-2432 to 71-2435:

(1) Clandestine drug lab means any area where glassware, heating devices, or other equipment or precursors, solvents, or related articles or reagents are used to unlawfully manufacture methamphetamine;

(2) Contaminated property means an enclosed area of any property or portion thereof intended for human habitation or use which has been contaminated by chemicals, chemical residue, methamphetamine, methamphetamine residue, or other substances from a clandestine drug lab;

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

(4) Law enforcement agency has the meaning found in section 81-1401;

(5) Local public health department has the meaning found in section 71-1626;

(6) Methamphetamine means methamphetamine, its salts, optical isomers, and salts of its isomers; and

(7) Rehabilitate or rehabilitation means all actions necessary to ensure that contaminated property is safe for human habitation or use.

**Source:** Laws 2006, LB 915, § 1; Laws 2007, LB296, § 543.



**71-2433 Property owner; law enforcement agency; Nebraska State Patrol; duties.**

A property owner with knowledge of a clandestine drug lab on his or her property shall report such knowledge and location as soon as practicable to the local law enforcement agency or to the Nebraska State Patrol. A law enforcement agency that discovers a clandestine drug lab in the State of Nebraska shall report the location of such lab to the Nebraska State Patrol within thirty days after making such discovery. Such report shall include the date of discovery of such lab, the county where the property containing such lab is located, and a legal description of the property or other description or address of such property sufficient to clearly establish its location. As soon as practicable after such discovery, the appropriate law enforcement agency shall provide the Nebraska State Patrol with a complete list of the chemicals, including methamphetamine, its precursors, solvents, and related reagents, found at or removed from the location of such lab. Upon receipt, the Nebraska State Patrol shall promptly forward a copy of such report and list to the department, the Department of Environmental Quality, the municipality or county where the lab is located, the director of the local public health department serving such municipality or county, and the property owner or owners.

**Source:** Laws 2006, LB 915, § 2.

**71-2434 Local public health department; powers and duties; fees; release of property for human habitation; civil penalty.**

(1) The local public health department serving the municipality or county where a clandestine drug lab has been discovered shall monitor the rehabilitation of any contaminated property at such location in accordance with standards and procedures established or approved by the department. The department shall adopt and promulgate rules and regulations to establish such standards and procedures no later than July 15, 2007. Such procedures shall include deadlines for completion of the various stages of rehabilitation and proper disposal of the contaminated property.

(2) A local public health department may charge and collect fees from the owner or owners of contaminated property to cover the costs directly associated with monitoring the rehabilitation of such property under this section as provided in rules and regulations of the department. A local public health department may contract with other local public health departments or other appropriate entities to assist in the monitoring of such rehabilitation. Upon the completion of such rehabilitation, the local public health department shall release the property for human habitation and commercial or other use in a timely manner.

(3) The owner or owners of contaminated property shall not permit the human habitation or use of such property until the rehabilitation of such property has been completed and the property has been released for such habitation or use under this section. An owner who knowingly violates this subsection may be subject to a civil penalty not to exceed one thousand dollars. The department shall enforce this subsection.

**Source:** Laws 2006, LB 915, § 3.

**71-2435 Leased property; termination of lease; notice.**

Notwithstanding any other provision of law, if leased property contains a clandestine drug lab, an owner may terminate the lease agreement upon three days' written notice for the purpose of rehabilitating the contaminated property in accordance with the rules and regulations adopted and promulgated pursuant to section 71-2434.

**Source:** Laws 2006, LB 915, § 4.

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

**71-2436 Immunosuppressant Drug Repository Program Act; act, how cited.**

Sections 71-2436 to 71-2443 shall be known and may be cited as the Immunosuppressant Drug Repository Program Act.

**Source:** Laws 2006, LB 994, § 42.

**71-2437 Terms, defined.**

For purposes of the Immunosuppressant Drug Repository Program Act:

- (1) Department means the Department of Health and Human Services;
- (2) Immunosuppressant drug means anti-rejection drugs that are used to reduce the body's immune system response to foreign material and inhibit a transplant recipient's immune system from rejecting a transplanted organ. Immunosuppressant drugs are available only as prescription drugs and come in tablet, capsule, and liquid forms. The recommended dosage depends on the type and form of immunosuppressant drug and the purpose for which it is being used. Immunosuppressant drug does not include drugs prescribed for inpatient use;
- (3) Participant means a transplant center that has elected to voluntarily participate in the program, that has submitted written notification to the department of its intent to participate in the program, and that accepts donated immunosuppressant drugs under the rules and regulations adopted and promulgated by the department for the program;
- (4) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe immunosuppressant drugs;
- (5) Prescription drug has the definition found in section 38-2841;
- (6) Program means the immunosuppressant drug repository program established pursuant to section 71-2438;
- (7) Transplant center means a hospital that operates an organ transplant program, including qualifying patients for transplant, registering patients on the national waiting list, performing transplant surgery, and providing care before and after transplant; and
- (8) Transplant program means the organ-specific facility within a transplant center. A transplant center may have transplant programs for the transplantation of hearts, lungs, livers, kidneys, pancreata, or intestines.

**Source:** Laws 2006, LB 994, § 43; Laws 2007, LB296, § 544; Laws 2007, LB463, § 1202.

**Cross References**

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

**71-2438 Immunosuppressant drug repository program; established.**

The department shall establish an immunosuppressant drug repository program for accepting donated immunosuppressant drugs and dispensing such drugs. Participation in the program shall be voluntary.

**Source:** Laws 2006, LB 994, § 44.

**71-2439 Immunosuppressant drug donation.**

Any person or entity, including, but not limited to, an immunosuppressant drug manufacturer or transplant center, may donate immunosuppressant drugs to a participant or return previously prescribed immunosuppressant drugs to the transplant center where they were originally prescribed.

**Source:** Laws 2006, LB 994, § 45.

**71-2440 Immunosuppressant drug; accepted or dispensed; conditions.**

(1) An immunosuppressant drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. An immunosuppressant drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section.

(2) An immunosuppressant drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, or (c) such drug has restricted distribution by the federal Food and Drug Administration.

(3) Subject to limitations provided in this section, unused immunosuppressant drugs dispensed under the medical assistance program may be accepted and dispensed under the immunosuppressant drug repository program.

**Source:** Laws 2006, LB 994, § 46; Laws 2015, LB37, § 76.

**71-2441 Participant; duties; resale prohibited.**

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated immunosuppressant drugs and shall inspect all such drugs prior to dispensing to determine if the drugs are adulterated or misbranded as defined in section 71-2461 or 71-2470 or if the drugs bear an expiration date prior to the date of dispensing. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) Immunosuppressant drugs donated under the program shall not be resold.

**Source:** Laws 2006, LB 994, § 47; Laws 2015, LB37, § 77.

**71-2442 Rules and regulations.**

The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Immunosuppressant

sant Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

- (1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated immunosuppressant drugs;
- (2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense immunosuppressant drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed; and
- (3)(a) Categories of immunosuppressant drugs that may be donated or returned under the program and (b) categories of immunosuppressant drugs that cannot be donated or returned under the program and the reason that such drugs cannot be donated or returned.

**Source:** Laws 2006, LB 994, § 48.

#### **71-2443 Immunity.**

(1) Any person or entity, including an immunosuppressant drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing immunosuppressant drugs under the Immunosuppressant Drug Repository Program Act or rules and regulations adopted and promulgated under the act shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Notwithstanding subsection (1) of this section, the donation of an immunosuppressant drug by a drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such drug manufacturer that would have existed but for the donation.

**Source:** Laws 2006, LB 994, § 49.

#### (j) AUTOMATED MEDICATION SYSTEMS ACT

#### **71-2444 Automated Medication Systems Act; act, how cited.**

Sections 71-2444 to 71-2452 shall be known and may be cited as the Automated Medication Systems Act.

**Source:** Laws 2008, LB308, § 1; Laws 2013, LB326, § 3.

#### **71-2445 Terms, defined.**

For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated

medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored, for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412, or for a resident in a long-term care facility in which a long-term care automated pharmacy is located from which drugs will be dispensed. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care automated pharmacy means a designated area in a long-term care facility where an automated medication system is located, that stores medications for dispensing pursuant to a medical order to residents in such long-term care facility, that is installed and operated by a pharmacy licensed under the Health Care Facility Licensure Act, and that is licensed under section 71-2451;

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

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

(8) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(9) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(10) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(11) Practice of pharmacy has the definition found in section 38-2837;

(12) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(13) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(14) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(15) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order

entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

**Source:** Laws 2008, LB308, § 2; Laws 2009, LB195, § 75; Laws 2013, LB23, § 35; Laws 2013, LB326, § 4; Laws 2017, LB166, § 23; Laws 2018, LB1034, § 64.  
Effective date July 19, 2018.

Cross References

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

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

**71-2446 Automated machine prohibited.**

Any automated machine that dispenses, delivers, or makes available, other than by administration, prescription medication directly to a patient or caregiver without the provision of pharmacist care is prohibited.

**Source:** Laws 2008, LB308, § 3; Laws 2013, LB326, § 5.

**71-2447 Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.**

Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

- (1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;
- (2) The name of the pharmacist responsible for implementation of and compliance with the policies and procedures;
- (3) Medication access and information access procedures;
- (4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;
- (5) A description of the process used by a pharmacist or pharmacy technician for filling an automated medication system;
- (6) A description of how and by whom the automated medication system is being utilized, including processes for verifying, dispensing, and distributing medications;
- (7) Staff education and training;
- (8) Quality assurance and quality improvement programs and processes;
- (9) Inoperability or emergency downtime procedures;
- (10) Periodic system maintenance; and
- (11) Medication security and controls.

**Source:** Laws 2008, LB308, § 4; Laws 2009, LB195, § 76; Laws 2013, LB326, § 6.

**71-2448 Prescription medication distribution machine; requirements; location.**

A prescription medication distribution machine:

(1) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(2) May be operated only (a) in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription, (b) in a remote dispensing pharmacy as described in section 71-436.02, or (c) in a long-term care automated pharmacy subject to section 71-2451.

**Source:** Laws 2008, LB308, § 5; Laws 2013, LB326, § 7; Laws 2018, LB731, § 99.

Operative date July 19, 2018.

**71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.**

(1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

**Source:** Laws 2008, LB308, § 6; Laws 2009, LB195, § 77; Laws 2013, LB326, § 8.

**71-2450 Pharmacist providing pharmacist remote order entry; requirements.**

A pharmacist providing pharmacist remote order entry shall:

(1) Be located within the United States;

(2) Maintain adequate security and privacy in accordance with state and federal laws, rules, and regulations;

(3) Be linked to one or more hospitals, long-term care facilities, or pharmacies for which services are provided via computer link, video link, audio link, or facsimile transmission;

(4) Have access to each patient's medical information necessary to perform via computer link, video link, or facsimile transmission a prospective drug utilization review as specified in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital, long-term care facility, or pharmacy where the patient is located.

**Source:** Laws 2008, LB308, § 7; Laws 2009, LB195, § 78.

**71-2451 Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.**

(1) In order for an automated medication system to be operated in a long-term care facility, a pharmacist in charge of a pharmacy licensed under the Health Care Facility Licensure Act and located in Nebraska shall annually license the long-term care automated pharmacy in which the automated medication system is located.

(2) The pharmacist in charge of a licensed pharmacy shall submit an application for licensure or renewal of licensure to the Division of Public Health of the Department of Health and Human Services with a fee in the amount of the fee the pharmacy pays for licensure or renewal. The application shall include:

(a) The name and location of the licensed pharmacy;

(b) If controlled substances are stored in the automated medication system, the federal Drug Enforcement Administration registration number of the licensed pharmacy. After the long-term care automated pharmacy is registered with the federal Drug Enforcement Administration, the pharmacist in charge of the licensed pharmacy shall provide the federal Drug Enforcement Administration registration number of the long-term care automated pharmacy to the division and any application for renewal shall include such registration number;

(c) The location of the long-term care automated pharmacy; and

(d) The name of the pharmacist in charge of the licensed pharmacy.

(3) As part of the application process, the division shall conduct an inspection by a pharmacy inspector as provided in section 38-28,101 of the long-term care automated pharmacy. The division shall also conduct inspections of the operation of the long-term care automated pharmacy as necessary.

(4) The division shall license a long-term care automated pharmacy which meets the licensure requirements of the Automated Medication Systems Act.

(5) A pharmacist in charge of a licensed pharmacy shall apply for a separate license for each location at which it operates one or more long-term care automated pharmacies. The licensed pharmacy shall be the provider pharmacy for the long-term care automated pharmacy.

(6) The pharmacist in charge of the licensed pharmacy operating a long-term care automated pharmacy shall:

(a) Identify a pharmacist responsible for the operation, supervision, policies, and procedures of the long-term care automated pharmacy;

(b) Implement the policies and procedures developed to comply with section 71-2447;

(c) Assure compliance with the drug storage and record-keeping requirements of the Pharmacy Practice Act;

(d) Assure compliance with the labeling requirements of subsection (8) of this section;

(e) Develop and implement policies for the verification of drugs by a pharmacist prior to being loaded into the automated medication system or for the verification of drugs by a pharmacist prior to being released for administration to a resident;

(f) Develop and implement policies for inventory, security, and accountability for controlled substances; and



(g) Assure that each medical order is reviewed by a pharmacist prior to the release of the drugs by the automated medication system. Emergency doses may be taken from an automated medication system prior to review by a pharmacist if the licensed pharmacy develops and implements policies for emergency doses.

(7) Supervision by a pharmacist is sufficient for compliance with the requirement of subdivision (6)(a) of this section if the pharmacist in the licensed pharmacy monitors the automated medication system electronically and keeps records of compliance with such requirement for five years.

(8) Each drug dispensed from a long-term care automated pharmacy shall be in a package with a label containing the following information:

- (a) The name and address of the long-term care automated pharmacy;
- (b) The prescription number;
- (c) The name, strength, and dosage form of the drug;
- (d) The name of the resident;
- (e) The name of the practitioner who prescribed the drug;
- (f) The date of filling; and
- (g) Directions for use.

(9) A prescription is required for any controlled substance dispensed from a long-term care automated pharmacy.

(10) The inventory which is transferred to a long-term care automated pharmacy shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

**Source:** Laws 2013, LB326, § 9.

#### Cross References

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

**Pharmacy Practice Act**, see section 38-2801.

#### **71-2451.01 Management of long-term care facility; prohibited acts.**

Unless otherwise allowed by state or federal law or regulation, the management of a long-term care facility at which an automated medication system is located shall not require a resident of the facility to obtain medication through the automated medication system and shall not restrict or impair the ability of a resident of the facility to obtain medications from the pharmacy of the resident's choice.

**Source:** Laws 2013, LB326, § 10.

#### **71-2452 Violations; disciplinary action.**

Any person who violates the Automated Medication Systems Act may be subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act or the Uniform Credentialing Act.

**Source:** Laws 2008, LB308, § 8; Laws 2013, LB326, § 11.

#### Cross References

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

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

(k) CORRECTIONAL FACILITIES AND JAILS  
RELABELING AND REDISPENSING

**71-2453 Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.**

(1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the pharmacy from which they were dispensed under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription as provided in this section.

(2)(a) The decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy.

(b) A dispensed prescription drug or device shall be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing. The drug or device shall be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container shall bear the expiration date or calculated expiration date and lot number of the drug or device.

(c) A prescription drug or device shall not be returned or relabeled and redispensed under this section if the drug or device is a controlled substance, if the drug has restricted distribution by the federal Food and Drug Administration, or if the relabeling and redispensing is otherwise prohibited by law.

(3) For purposes of this section:

(a) Administration has the definition found in section 38-2807;

(b) Calculated expiration date has the definition found in section 38-2808.01;

(c) Criminal detention facility has the definition found in section 83-4,125;

(d) Department of Correctional Services facility has the definition of facility found in section 83-170;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Jail has the definition found in section 47-117;

(g) Juvenile detention facility has the definition found in section 83-4,125;

(h) Prescription has the definition found in section 38-2840; and

(i) Prescription drug or device has the definition found in section 38-2841.

(4) The Jail Standards Board, in consultation with the Board of Pharmacy, shall adopt and promulgate rules and regulations relating to the return of dispensed prescription drugs or devices for credit, relabeling, or redispensing under this section, including, but not limited to, rules and regulations relating to (a) education and training of persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or

device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the pharmacy to accept the returned drug or device.

(5) Any person or entity which exercises reasonable care in accepting, distributing, or dispensing prescription drugs or devices under this section or rules and regulations adopted and promulgated under this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

**Source:** Laws 2009, LB288, § 46; Laws 2011, LB274, § 2; Laws 2015, LB37, § 78.

#### (l) PRESCRIPTION DRUG MONITORING PROGRAM

**71-2454 Prescription drug monitoring; system established; provisions included; not public records.**

(1) An entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a) preventing the misuse of controlled substances that are prescribed and (b) allowing prescribers and dispensers to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.

(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, beginning January 1, 2017, all dispensed prescriptions of controlled substances shall be reported; and beginning January 1, 2018, all prescription information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:

(a) Prohibit any patient from opting out of the prescription drug monitoring system;

(b) Require all prescriptions dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her designee daily after such prescription is dispensed, including those for patients paying cash for such prescription drug or otherwise not relying on a third-party payor for payment for the prescription drug;

(c) Allow all prescribers or dispensers of prescription drugs to access the system at no cost to such prescriber or dispenser;

(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act; and

(e) Make the prescription information available to the statewide health information exchange described in section 71-2455 for access by its participants if such access is in compliance with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, except that if a patient opts out of the statewide health information

exchange, the prescription information regarding that patient shall not be accessible by the participants in the statewide health information exchange.

Dispensers may begin on February 25, 2016, to report dispensing of prescriptions to the entity described in section 71-2455 which is responsible for establishing the system of prescription drug monitoring.

(3) Except as provided in subsection (4) of this section, prescription information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:

- (a) The patient's name, address, and date of birth;
- (b) The name and address of the pharmacy dispensing the prescription;
- (c) The date the prescription is issued;
- (d) The date the prescription is filled;
- (e) The name of the drug dispensed or the National Drug Code number as published by the federal Food and Drug Administration of the drug dispensed;
- (f) The strength of the drug prescribed;
- (g) The quantity of the drug prescribed and the number of days' supply; and
- (h) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance.

(4) Beginning July 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report a dispensed prescription of controlled substances listed on Schedule II, Schedule III, or Schedule IV pursuant to section 28-405. Each such veterinarian shall indicate that the prescription is an animal prescription and shall include the following information in such report:

- (a) The first and last name and address, including city, state, and zip code, of the individual to whom the drug is dispensed in accordance with a valid veterinarian-client-patient relationship;
- (b) Reporting status;
- (c) The first and last name of the prescribing veterinarian and his or her federal Drug Enforcement Administration number;
- (d) The name of the drug dispensed and the prescription number;
- (e) The date the prescription is written and the date the prescription is filled;
- (f) The number of refills authorized, if any; and
- (g) The quantity of the drug dispensed and the number of days' supply.

(5)(a) All prescription drug information submitted pursuant to this section, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system are confidential, are privileged, are not public records, and may be withheld pursuant to section 84-712.05.

(b) No patient-identifying data as defined in section 81-664, including the data collected under subsection (3) of this section, shall be disclosed, made public, or released to any public or private person or entity except to the statewide health information exchange described in section 71-2455 and its participants and to prescribers and dispensers as provided in subsection (2) of this section.

(c) All other data is for the confidential use of the department and the statewide health information exchange described in section 71-2455 and its participants. The department may release such information as Class I, Class II, or Class IV data in accordance with section 81-667 to the private or public persons or entities that the department determines may view such records as provided in sections 81-663 to 81-675.

(6) Before accessing the prescription drug monitoring system, any user shall undergo training on the purpose of the system, access to and proper usage of the system, and the law relating to the system, including confidentiality and security of the prescription drug monitoring system. Such training shall be administered by the statewide health information exchange described in section 71-2455 which shall have access to the prescription drug monitoring system for training and administrative purposes. Users who have been trained prior to May 10, 2017, are deemed to be in compliance with the training requirement of this subsection.

(7) For purposes of this section:

(a) Designee means any licensed or registered health care professional credentialed under the Uniform Credentialing Act designated by a prescriber or dispenser to act as an agent of the prescriber or dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is supervised by such prescriber or dispenser;

(b) Dispensed prescription means a prescription drug delivered to the ultimate user by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital care or emergency department care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) the dispensing to a nonhuman patient of a prescription drug which is not a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of section 28-405;

(c) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription to the ultimate user by or pursuant to the lawful order of a prescriber;

(d) Participant means an individual or entity that has entered into a participation agreement with the statewide health information exchange described in section 71-2455 which requires the individual or entity to comply with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder; and

(e) Prescriber means a health care professional authorized to prescribe in the profession which he or she practices.

**Source:** Laws 2011, LB237, § 1; Laws 2014, LB1072, § 1; Laws 2016, LB471, § 1; Laws 2017, LB223, § 1; Laws 2018, LB1034, § 65. Effective date July 19, 2018.

**Cross References**

**Medical Assistance Act**, see section 68-901.

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

**Veterinary Medicine and Surgery Practice Act**, see section 38-3301.

**71-2454.01 Veterinary Prescription Monitoring Program Task Force; created; duties; members; meeting; report.**

(1) The Veterinary Prescription Monitoring Program Task Force is created. The task force shall conduct a study to develop recommendations of which controlled substances shall be reported by a veterinarian to the prescription drug monitoring program created under section 71-2454 when dispensing drugs from a veterinarian's office or an animal shelter. The study shall include appropriate methods and procedures of reporting by the veterinarians with the necessary data base field information. The task force shall utilize nationally available resources afforded by the American Association of Veterinary State Boards and the Department of State Legislative and Regulatory Affairs of the American Veterinary Medical Association in development of the recommendations.

(2) The task force shall consist of at least ten members appointed by the chairperson of the Health and Human Services Committee of the Legislature as follows: One member of the Health and Human Services Committee; two at-large members of the Legislature; three members selected from a list of six veterinarians provided by the Board of Veterinary Medicine and Surgery, one of whom is employed by or provides services at an animal shelter; one pharmacist nominated by the Nebraska Pharmacists Association or its successor organization; and two members nominated by the Nebraska Veterinary Medical Association or its successor organization. The task force shall also include a representative of the prescription drug monitoring program who shall be a nonvoting member and serve in an advisory capacity only.

(3) The members of the task force shall be appointed within one hundred twenty days after February 25, 2016. The initial meeting of the task force shall be convened within one hundred eighty days after February 25, 2016. The task force shall elect a chairperson and may elect any additional officers from among its members. All task force members shall serve without compensation.

(4) The task force shall report its findings and recommendations to the Health and Human Services Committee of the Legislature on or before December 1, 2016.

(5) For purposes of this section, animal shelter has the definition found in section 54-626.

**Source:** Laws 2016, LB471, § 2.

**71-2455 Prescription drug monitoring; Department of Health and Human Services; duties; powers.**

The Department of Health and Human Services, in collaboration with the Nebraska Health Information Initiative or any successor public-private statewide health information exchange, shall enhance or establish technology for prescription drug monitoring to carry out the purposes of section 71-2454. The department may use state funds and accept grants, gifts, or other funds in order to implement and operate the technology. The department may adopt and promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of sections 71-2454 and 71-2455.

**Source:** Laws 2011, LB237, § 2; Laws 2014, LB1072, § 2.

**71-2456 Prescription Drug Monitoring Program Fund; created; investment.**

The Prescription Drug Monitoring Program Fund is created. The Department of Health and Human Services shall administer the fund which shall include any state funds, grants, or gifts received by the department for the purposes of carrying out the purposes of sections 71-2454 and 71-2455. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2014, LB1072, § 3.

**Cross References**

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

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

(m) PRESCRIPTION DRUG SAFETY ACT

**71-2457 Prescription Drug Safety Act; act, how cited.**

Sections 71-2457 to 71-2483 shall be known and may be cited as the Prescription Drug Safety Act.

**Source:** Laws 2015, LB37, § 1.

**71-2458 Definitions, where found.**

For purposes of the Prescription Drug Safety Act, the definitions found in sections 71-2459 to 71-2476 apply.

**Source:** Laws 2015, LB37, § 2.

**71-2459 Administer, defined.**

Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.

**Source:** Laws 2015, LB37, § 3.

**71-2460 Administration, defined.**

Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.

**Source:** Laws 2015, LB37, § 4.

**71-2461 Adulterated drug, defined.**

Adulterated drug means an article (1) if, when a drug is sold under or by the name recognized in The United States Pharmacopeia and The National Formulary, it differs from the standard of strength, quality, or purity as determined by the test laid down in The United States Pharmacopeia and The National Formulary official at the time of investigation, except that no drug defined in The United States Pharmacopeia and The National Formulary shall be deemed to be adulterated under this subdivision if the standard of strength or purity is plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in The United

States Pharmacopeia and The National Formulary, or (2) if its strength or purity falls below the professed standard of quality under which it is sold.

**Source:** Laws 1941, c. 141, § 9, p. 560; C.S.Supp.,1941, § 81-928; R.S. 1943, § 81-620; R.S.1943, (2009), § 71-2401; Laws 2015, LB37, § 5.

**71-2462 Chart order, defined.**

Chart order has the definition found in section 38-2810.

**Source:** Laws 2015, LB37, § 6.

**71-2463 Compounding, defined.**

Compounding means the preparation of components into a drug product.

**Source:** Laws 2015, LB37, § 7.

**71-2464 Controlled substance, defined.**

Controlled substance has the definition found in section 28-401.

**Source:** Laws 2015, LB37, § 8.

**71-2465 Dispense or dispensing, defined.**

(1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver as defined in section 38-2809 in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver as defined in section 38-2809 other than by administering.

**Source:** Laws 2015, LB37, § 9.

**71-2466 Distribute, defined.**

Distribute means to deliver a drug or device, other than by administering or dispensing.

**Source:** Laws 2015, LB37, § 10.

**71-2467 Drugs, medicines, and medicinal substances, defined.**

Drugs, medicines, and medicinal substances means (1) articles recognized in The United States Pharmacopeia and The National Formulary, the Homeopathic Pharmacopoeia of the United States, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

**Source:** Laws 2015, LB37, § 11.

**71-2468 Labeling, defined.**



Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by section 71-2479 and federal law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

**Source:** Laws 2015, LB37, § 12.

**71-2469 Medical order, defined.**

Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

**Source:** Laws 2015, LB37, § 13.

**71-2470 Misbranded drug, defined.**

(1) Misbranded drug means a drug, the package or label of which bears any statement, design, or device regarding a drug, or the ingredients of substances contained therein, which is false or misleading in any particular, or any drug product which is falsely labeled with the name and place of business of the manufacturer, packager, or distributor.

(2) Misbranded drug includes an article (a) if it is an imitation of or offered for sale under the name of another article, (b) if it is labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up have been removed, in whole or in part, and other contents have been placed in such package, or if the package fails to bear a statement, on the label, of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, phenacetine (acetphenetidine), antipyrine, belladonna, or any derivative or preparation of any such substance contained therein, or (c) if its package or label bears or contains any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false or fraudulent.

**Source:** Laws 1941, c. 141, § 10, p. 561; C.S.Supp.,1941, § 81-929; R.S.1943, § 81-621; R.S.1943, (2009), § 71-2402; Laws 2015, LB37, § 14.

**71-2471 Pharmacist, defined.**

Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy as defined in section 38-2837.

**Source:** Laws 2015, LB37, § 15.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2472 Pharmacy, defined.**

Pharmacy has the same meaning as in section 71-425.

**Source:** Laws 2015, LB37, § 16.

**71-2473 Practitioner, defined.**

Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a pharmacist, a physician assistant, a physician, or a podiatrist credentialed under the Uniform Credentialing Act.

**Source:** Laws 2015, LB37, § 17.

## Cross References

Uniform Credentialing Act, see section 38-101.

**71-2474 Prescribe, defined.**

Prescribe means to issue a medical order.

**Source:** Laws 2015, LB37, § 18.

**71-2475 Prescription, defined.**

Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order.

**Source:** Laws 2015, LB37, § 19.

**71-2476 Prescription drug or device or legend drug or device, defined.**

(1) Prescription drug or device or legend drug or device means a drug or device:

(a) Which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) Caution: Federal law prohibits dispensing without prescription;

(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(iii) "Rx Only"; or

(b) Which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend "Caution: Federal law restricts this device to sale by or on the order of a licensed health care practitioner" or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

**Source:** Laws 2015, LB37, § 20.

**71-2477 Act; how construed; practitioner; duties; compound or reconstitute drug; duties.**

(1) Nothing in the Prescription Drug Safety Act shall be construed as authority for a practitioner to perform any activity he or she is not otherwise authorized to perform by another law of this state.

(2) A practitioner that stores, dispenses, compounds, administers, or otherwise provides any drug to a patient shall comply with the Prescription Drug Safety Act.

(3) A practitioner or authorized person that compounds or reconstitutes any drug shall comply with section 38-2867.01.

**Source:** Laws 2015, LB37, § 21.

**71-2478 Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts.**

(1) Except as otherwise provided in this section or the Uniform Controlled Substances Act or except when administered directly by a practitioner to an ultimate user, a legend drug which is not a controlled substance shall not be dispensed without a written, oral, or electronic prescription. Such prescription shall be valid for twelve months after the date of issuance.

(2) A prescription for a legend drug which is not a controlled substance shall contain the following information prior to being filled by a pharmacist or practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: (a) Patient's name, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of authorized refills, including pro re nata or PRN refills, (i) prescribing practitioner's name, and (j) if the prescription is written, prescribing practitioner's signature. Prescriptions for controlled substances must meet the requirements of sections 28-414 and 28-414.01.

(3) A written, signed paper prescription may be transmitted to the pharmacy via facsimile which shall serve as the original written prescription. An electronic prescription may be electronically or digitally signed and transmitted to the pharmacy and may serve as the original prescription.

(4) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain, by means of misrepresentation, fraud, forgery, deception, or subterfuge, possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act which can only be lawfully dispensed, under federal statutes in effect on January 1, 2015, upon the written or oral prescription of a practitioner authorized to prescribe such substances.

**Source:** Laws 2015, LB37, § 22; Laws 2017, LB166, § 24.

**Cross References**

Uniform Controlled Substances Act, see section 28-401.01.

**71-2479 Legend drug not a controlled substance; prescription; retention; label; contents.**

(1) Any prescription for a legend drug which is not a controlled substance shall be kept by the pharmacy or the practitioner who holds a pharmacy license in a readily retrievable format and shall be maintained for a minimum of five years. The pharmacy or practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Before dispensing a legend drug which is not a controlled substance pursuant to a written, oral, or electronic prescription, a label shall be affixed to the container in which the drug is dispensed. Such label shall bear (a) the name, address, and telephone number of the pharmacy or practitioner, (b) the name of the patient, (c) the date of filling, (d) the serial number of the prescription under which it is recorded in the practitioner's prescription records, (e) the name of the prescribing practitioner, (f) the directions for use, (g) the name of the drug, device, or biological unless instructed to omit by the prescribing practitioner, (h) the strength of the drug or biological, if applicable, (i) the quantity of the drug, device, or biological in the container, except unit-dose containers, (j) the dosage form of the drug or biological, and (k) any cautionary statements contained in the prescription.

(3) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.

**Source:** Laws 2015, LB37, § 23; Laws 2017, LB166, § 25.

**71-2480 Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.**

Any drug which is adulterated or misbranded and which is sold, offered for sale, or delivered within this state shall be liable to be proceeded against where the same is found and seized for confiscation by a process of libel for condemnation. If such drug is condemned as being adulterated or misbranded or of a poisonous or deleterious character, the drug shall be disposed of by destruction or sale as the court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of this state, and such goods shall not be sold in any jurisdiction contrary to the Prescription Drug Safety Act or the laws of that jurisdiction. Any libel proceeding in rem may be joined with any criminal prosecution in personam or may be prosecuted separately.

**Source:** Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-623; R.S.1943, (2009), § 71-2404; Laws 2015, LB37, § 24.

**71-2481 Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.**

No person shall, within this state, manufacture for sale therein or have in his or her possession with intent to sell, offer or expose for sale, or sell any remedies, medicines, or drugs which are adulterated or misbranded.

**Source:** Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-624; R.S.1943, (2009), § 71-2405; Laws 2015, LB37, § 25.

**71-2482 Drugs; violations; penalties.**

Any person violating any of the provisions of section 71-2478, 71-2480, or 71-2481 is guilty of a Class III misdemeanor. Any person, for a second or

subsequent violation of any of the provisions of section 71-2480 or 71-2481, is guilty of a Class II misdemeanor.

**Source:** Laws 2015, LB37, § 26; Laws 2016, LB1094, § 33.

**71-2483 Communication authorized.**

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405. An employee or agent of a prescribing practitioner may communicate a refill authorization issued by the prescribing practitioner to a pharmacy technician.

**Source:** Laws 2015, LB37, § 27; Laws 2018, LB731, § 100.  
Operative date July 19, 2018.

**ARTICLE 25**

**POISONS**

**Cross References**

- Asbestos Control Act**, see section 71-6317.
- Commercial feed**, adulteration, see section 54-854.
- Controlled substances**, prohibited acts, Uniform Controlled Substances Act, see section 28-401.01.
- Department of Health and Human Services:**
  - Emergencies or epidemics, authority, see section 71-502 et seq.
  - Enforcement powers, see section 81-601.
- Fish**, use of poison for taking, prohibited, see section 37-554.
- Hospitals**, diagnosis code required for poisoning, see section 71-2080 et seq.
- Murder by poisoning**, see sections 28-303 to 28-305.
- Pesticide Act**, see section 2-2622.
- Poison gas:**
  - Criminal penalties, see sections 28-1213 to 28-1239.
  - Game Law, prohibited acts, see sections 37-531 and 37-561.
- Seeds**, labeling, when required, see section 81-2,147.02.

(a) POISON CONTROL ACT

- |             |  |
|-------------|--|
| Section     |  |
| 71-2501.    | Poison, defined; exceptions.   |
| 71-2501.01. | Act, how cited.  |
| 71-2502.    | Poisons; sale; labeling required.  |
| 71-2503.    | Poisons; sale; duty of vendor to record in Poison Register.  |
| 71-2504.    | Poisons; sale; false representation or use of fictitious name by purchaser, prohibited.            |
| 71-2505.    | Act; applicability.  |
| 71-2506.    | Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.                  |
| 71-2507.    | Poisons; sale by person not registered pharmacist prohibited; exception.                           |
| 71-2508.    | Poisons; sale to minors and incompetents, prohibited.  |
| 71-2509.    | Poisons; restriction to sale upon medical order; power of Department of Health and Human Services. |
| 71-2510.    | Sales excluded from act.   |
| 71-2510.01. | Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.     |
| 71-2511.    | Repealed. Laws 2015, LB 37, § 93.  |
| 71-2512.    | Violations; penalty.   |

(b) LEAD POISONING

- |          |                       |
|----------|-----------------------|
| 71-2513. | Act, how cited.       |
| 71-2514. | Legislative findings. |
| 71-2515. | Legislative intent.   |

§ 71-2501

PUBLIC HEALTH AND WELFARE

Section

- 71-2516. Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.
- 71-2517. Entitlement not created; funding.
- (c) LEAD POISONING PREVENTION PROGRAM
- 71-2518. Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.

(a) POISON CONTROL ACT

**71-2501 Poison, defined; exceptions.**

For purposes of the Poison Control Act:

(1) Poison includes: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, homatropine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, scopolamine, solanum, stramonium, staphisagra, strophanthus, veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, glacial acetic acid; trichloroacetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous; paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate; and

(2) Poison does not include:

(a) Agricultural or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, or fire protection purposes or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug, and Cosmetic Act, as such act existed on May 1, 2001, or the Federal Insecticide, Fungicide, and Rodenticide Act, as such act existed on May 1, 2001;

(b) Preparations prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state; and

(c) Preparations for the destruction of rodents, predatory animals, or noxious weeds.

**Source:** Laws 1941, c. 141, § 13, p. 562; C.S.Supp.,1941, § 81-932; R.S.1943, § 81-625; Laws 1957, c. 296, § 1, p. 1068; Laws 2001, LB 398, § 75; Laws 2015, LB37, § 80.

**71-2501.01 Act, how cited.**

Sections 71-2501 to 71-2512 shall be known and may be cited as the Poison Control Act.

**Source:** Laws 2015, LB37, § 79.

**71-2502 Poisons; sale; labeling required.**

It shall be unlawful for any person to vend, sell, dispense, give away, furnish, or otherwise dispose of, or cause to be vended, sold, dispensed, given away, furnished, or otherwise disposed of, either directly or indirectly, any poison without affixing, or causing to be affixed, to the bottle, box, vessel, or package containing the same, a label, printed or plainly written, containing the name of the article, the word poison, the name and place of business of the seller, manufacturer, packager, or distributor, and the date of sale; nor shall it be lawful for any person to deliver any of such poisons until he or she has satisfied himself or herself that the person to whom delivery is made is aware of and understands the poisonous nature of the article and that such poison is to be used for a legitimate purpose.

**Source:** Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-626; Laws 2015, LB37, § 81.

**71-2503 Poisons; sale; duty of vendor to record in Poison Register.**

Every person who disposes of or sells at retail or furnishes any of the poisons in section 71-2501 or any other poisons which the Department of Health and Human Services may from time to time designate, as provided in section 71-2506, shall, before delivery, enter in a book kept for that purpose, to be known as the Poison Register, the date of sale, the name and address of the purchaser, the name and quantity of the poison, the purpose for which it is purchased, and the name of the dispenser, and such record shall be signed by the person to whom the poison is delivered. Such record shall be kept in the form prescribed by the department, and the book containing the same must be always open for inspection by the proper authorities, and must be preserved for at least two years after the last entry.

**Source:** Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-627; Laws 1996, LB 1044, § 626; Laws 2007, LB296, § 545.

**71-2504 Poisons; sale; false representation or use of fictitious name by purchaser, prohibited.**

It shall be unlawful for any person to give or sign a fictitious name or, in order to procure any poison, to make any false representation to the person from whom the same is procured; and it shall be unlawful for any person delivering any poison under the provision of section 71-2503 knowingly to make a fictitious, false or misleading entry in the Poison Register.

**Source:** Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-628.

**71-2505 Act; applicability.**

(1) The Poison Control Act does not apply to the dispensing of poisons or preparation of medicines by practitioners credentialed under the Uniform

Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501.

(2) The Poison Control Act does not apply to the sale of patent or proprietary medicines in the original package of the manufacturer, packager, or distributor when labeled in conformity with section 71-2502.

**Source:** Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-629; Laws 2007, LB463, § 1203; Laws 2015, LB37, § 82.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2506 Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.**

(1) Whenever, in the judgment of the Department of Health and Human Services, it becomes necessary for the protection of the public to add any poison, not specifically enumerated in section 71-2501, the department shall have printed a revised schedule of all poisons coming under section 71-2501. The department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the department under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501.

(2) Whenever the department proposes to bring any additional poisons under section 71-2501, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the department. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the department determines to be reasonably calculated to notify the various interested parties. The department may adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary.

(3) Any person aggrieved by any order of the department passed pursuant to this section may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-630; Laws 1988, LB 352, § 127; Laws 1996, LB 1044, § 627; Laws 2007, LB296, § 546; Laws 2015, LB37, § 83.

**Cross References**

Administrative Procedure Act, see section 84-920.

**71-2507 Poisons; sale by person not registered pharmacist prohibited; exception.**

It shall be unlawful for any person, other than a duly registered pharmacist, to sell or dispense poisons as named in section 71-2501, except as otherwise provided in section 71-2501.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-631; Laws 2015, LB37, § 84.

**71-2508 Poisons; sale to minors and incompetents, prohibited.**



It shall be unlawful for any person in this state to sell or deliver any poison to any minor under eighteen years of age or to any person known to be of unsound mind or under the influence of intoxicants.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-632.

**71-2509 Poisons; restriction to sale upon medical order; power of Department of Health and Human Services.**

The Department of Health and Human Services may adopt and promulgate rules and regulations, whenever such action becomes necessary for the protection of the public, to prohibit the sale of any poison, subject to this section, except upon the original written, oral, or electronic medical order of practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501. Whenever in the opinion of the department it is in the interest of the public health, the department may adopt and promulgate rules and regulations, not inconsistent with the Poison Control Act, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike. The department shall, upon request by any person authorized by the Poison Control Act to sell or dispense any poisons, furnish such person with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by the Poison Control Act.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-633; Laws 1996, LB 1044, § 628; Laws 2007, LB296, § 547; Laws 2007, LB463, § 1204; Laws 2015, LB37, § 85.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2510 Sales excluded from act.**

The Poison Control Act does not apply to sales of poisons made to practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts or for industrial, manufacturing, or agricultural purposes and believed to be purchasing any poison for legitimate use, or to the sales of pesticides used in agricultural and industrial arts or products used for the control of insect or animal pests or weeds or fungus diseases, if in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with section 71-2502.

**Source:** Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-634; Laws 1993, LB 588, § 36; Laws 2007, LB463, § 1205; Laws 2015, LB37, § 86.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-2510.01 Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.**

(1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 85; Laws 1993, LB 121, § 176; R.S.1943, (2008), § 28-425; Laws 2015, LB37, § 87.

**71-2511 Repealed. Laws 2015, LB 37, § 93.****71-2512 Violations; penalty.**

Any person violating any of the provisions of the Poison Control Act, except as specific penalties are otherwise imposed, is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of the Poison Control Act, when another specific penalty is not expressly imposed, is guilty of a Class II misdemeanor.

**Source:** Laws 1941, c. 141, § 17, p. 567; C.S.Supp.,1941, § 81-935; R.S.1943, § 81-636; Laws 1972, LB 1067, § 3; Laws 1977, LB 39, § 167; Laws 1988, LB 1100, § 131; Laws 1988, LB 1012, § 12; Laws 2015, LB37, § 88.

## (b) LEAD POISONING

**71-2513 Act, how cited.**

Sections 71-2513 to 71-2517 shall be known and may be cited as the Childhood Lead Poisoning Prevention Act.

**Source:** Laws 1993, LB 536, § 14.

**71-2514 Legislative findings.**

The Legislature hereby finds and declares that:

(1) Childhood environmental lead poisoning constitutes a serious threat to the public health of the children of this state and the identification, treatment, and prevention of childhood environmental lead poisoning is a goal of the people;

(2) The effectiveness of distinguishing and abating lead hazards in the environment and thereby providing a safer environment to prevent childhood lead poisoning has been well documented;

(3) Childhood environmental lead poisoning prevention programs have had a tremendous impact on reducing the occurrence of lead poisoning in the United States;

(4) The United States Department of Health and Human Services, Public Health Service, has as its Healthy People 2000 objective the identification, treatment, and reduction of childhood environmental lead poisoning; and

(5) There is a national effort to institute environmental lead hazard awareness action plan programs and to provide funds to implement the Healthy People 2000 objective.

**Source:** Laws 1993, LB 536, § 15.

#### **71-2515 Legislative intent.**

It is the intent of the Legislature that the citizens of Nebraska benefit by participation in national efforts to take innovative action to provide lead analysis of our children and the environment in which they are cared for, live, and learn.

**Source:** Laws 1993, LB 536, § 16.

#### **71-2516 Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.**

The Department of Health and Human Services may participate in national efforts and may develop a statewide environmental lead hazard awareness action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide environmental lead hazard awareness action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately protected from environmental lead hazards;

(2) Apply for and receive public and private awards to develop and administer a statewide comprehensive environmental lead hazard awareness action plan program;

(3) Provide environmental lead hazard information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize the protection of children from environmental lead poisoning and the use of private practitioners; and

(5) Evaluate the effectiveness of these statewide efforts, identify children at special risk for environmental lead hazard exposure, and report electronically on the activities of the statewide program annually to the Legislature and the citizens of Nebraska.

**Source:** Laws 1993, LB 536, § 17; Laws 1996, LB 1044, § 630; Laws 2012, LB782, § 115.

#### **71-2517 Entitlement not created; funding.**

The Childhood Lead Poisoning Prevention Act is not intended to create an entitlement to any activities described in the act, and the Department of Health and Human Services may perform the activities described in the act to the extent funds are available.

**Source:** Laws 1993, LB 536, § 18; Laws 1996, LB 1044, § 631.

(c) LEAD POISONING PREVENTION PROGRAM

**71-2518 Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.**

(1) The Division of Public Health of the Department of Health and Human Services shall establish a lead poisoning prevention program that has the following components:

(a) A coordinated plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards. Such plan shall:

(i) Provide a standard, stated in terms of micrograms of lead per deciliter of whole blood, to be used in identifying elevated blood-lead levels;

(ii) Require that a child be tested for an elevated blood-lead level in accordance with the medicaid state plan as defined in section 68-907 if the child is a participant in the medical assistance program established pursuant to the Medical Assistance Act; and

(iii) Recommend that a child be tested for elevated blood-lead levels if the child resides in a zip code with a high prevalence of children with elevated blood-lead levels as demonstrated by previous testing data or if the child meets one of the criteria included in a lead poisoning prevention screening questionnaire developed by the department; and

(b) An educational and community outreach plan regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public school personnel, owners and tenants of residential dwellings, and parents of young children. Such educational materials shall be made available to the general public via the department's web site.

(2) The results of all blood-lead level tests conducted in Nebraska shall be reported to the department. When the department receives notice of a child with an elevated blood-lead level as stated in the plan required pursuant to subdivision (1)(a) of this section, it shall initiate contact with the local public health department or the physician, or both, of such child and offer technical assistance, if necessary.

(3) The department shall report electronically to the Legislature by January 1, 2013, and each January 1 thereafter, the number of children from birth through age six who were screened for elevated blood-lead levels during the preceding fiscal year and who were confirmed to have elevated blood-lead levels as stated in the plan required pursuant to subdivision (1)(a) of this section. The report shall compare such results with those of previous fiscal years and shall identify any revisions to the plan required by subdivision (1)(a) of this section.

(4) This section does not require the department to pay the cost of elevated-blood-lead-level testing in accordance with this section except in cases described in subdivision (1)(a)(ii) of this section.

**Source:** Laws 2012, LB1038, § 1; Laws 2013, LB222, § 27.

## Cross References

Medical Assistance Act, see section 68-901.

## ARTICLE 26

## STATE BOARD OF HEALTH

## Section

- 71-2601. State Board of Health; members; appointment; qualifications.
- 71-2602. Board; members; term; vacancy; appointment.
- 71-2602.01. Repealed. Laws 1993, LB 375, § 7.
- 71-2603. Board; members; removal; grounds; procedure.
- 71-2604. Repealed. Laws 1981, LB 249, § 8.
- 71-2605. Board; members; per diem; expenses.
- 71-2606. Board; members; chairperson; officers; election.
- 71-2607. Board; meetings; notice; open to public.
- 71-2608. Repealed. Laws 1981, LB 249, § 8.
- 71-2609. Repealed. Laws 1996, LB 1044, § 985.
- 71-2610. Board; advise Division of Public Health of the Department of Health and Human Services.
- 71-2610.01. Board; powers and duties.
- 71-2611. Board; immunity.
- 71-2612. Repealed. Laws 1981, LB 249, § 8.
- 71-2613. Repealed. Laws 1981, LB 249, § 8.
- 71-2614. Repealed. Laws 1981, LB 249, § 8.
- 71-2615. Repealed. Laws 1981, LB 249, § 8.
- 71-2616. Repealed. Laws 1981, LB 249, § 8.
- 71-2617. Health and Human Services Reimbursement Fund; created; purpose; investment.
- 71-2618. Repealed. Laws 1996, LB 1044, § 985.
- 71-2618.01. Repealed. Laws 1999, LB 13, § 1.
- 71-2619. Fees; establish; disposition.
- 71-2620. Agreements for laboratory tests; contents.
- 71-2621. Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.
- 71-2622. Private water supply; private sewage disposal facilities; inspection; fees.
- 71-2623. Repealed. Laws 1992, LB 860, § 8.

**71-2601 State Board of Health; members; appointment; qualifications.**

(1) The State Board of Health shall promote and protect the health and safety of all people in Nebraska.

(2) The board shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed under the Health Care Facility Licensure Act, one member shall be a credentialed mental health professional, and two members shall be public members who at all times are public-spirited citizens of Nebraska

interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. If a member fails at any time to meet the qualifications for the position for which he or she was appointed, such member may be removed by the Governor pursuant to section 71-2603.

(3) The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

**Source:** Laws 1953, c. 335, § 7, p. 1102; Laws 1959, c. 327, § 1, p. 1191; Laws 1967, c. 454, § 1, p. 1405; Laws 1969, c. 574, § 1, p. 2320; Laws 1971, LB 279, § 1; Laws 1978, LB 575, § 1; Laws 1989, LB 342, § 30; Laws 1993, LB 375, § 2; Laws 1995, LB 563, § 46; Laws 1997, LB 622, § 105; Laws 1999, LB 828, § 168; Laws 2000, LB 819, § 107; Laws 2003, LB 56, § 1.

**Cross References**

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

**71-2602 Board; members; term; vacancy; appointment.**

The Governor shall appoint the members of the State Board of Health. Each member of the board serving on October 1, 2003, shall hold office until August 1 of the calendar year in which his or her term would otherwise expire. Appointments made for the succeeding members shall be for terms of five years. The term of office of each member of the board shall expire on August 1 of the appropriate year. If a vacancy occurs prior to the expiration of a term, the Governor shall appoint a successor with similar qualifications for the remainder of the unexpired term. No member of the board shall serve more than two consecutive, full terms. If the Legislature is not in session when an appointment is made by the Governor, the member shall take office and act as a recess appointee until the Legislature convenes.

**Source:** Laws 1953, c. 335, § 8, p. 1102; Laws 1959, c. 327, § 2, p. 1191; Laws 1972, LB 1067, § 4; Laws 1993, LB 375, § 3; Laws 2003, LB 56, § 2.

**71-2602.01 Repealed. Laws 1993, LB 375, § 7.**

**71-2603 Board; members; removal; grounds; procedure.**

Members of the State Board of Health may be removed by the Governor for inefficiency, neglect of duty, failure to maintain the qualifications for the position for which appointed, or misconduct in office, but only after delivering to the member a copy of the charges and affording the member an opportunity of being publicly heard in person or by counsel in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the Governor's findings thereon, together with a complete record of the proceedings.

**Source:** Laws 1953, c. 335, § 9, p. 1103; Laws 2003, LB 56, § 3.

**71-2604 Repealed. Laws 1981, LB 249, § 8.**

**71-2605 Board; members; per diem; expenses.**

The members of the State Board of Health shall receive the sum of twenty dollars per diem, while actually engaged in the business of the board, and shall be reimbursed for the necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1953, c. 335, § 11, p. 1103; Laws 1981, LB 204, § 123.

**71-2606 Board; members; chairperson; officers; election.**

In the last calendar quarter of each year, the members of the State Board of Health shall meet and elect a chairperson of the board from the members and such other officers, including a vice-chairperson and a secretary, as the board deems necessary. In case of the death, resignation, or other permanent absence of the chairperson of the board, the vice-chairperson shall assume the office of chairperson and the members of the board at the next regular meeting of the board, or at a special meeting of the board pursuant to a call signed by five members of which the other members shall have at least three days' notice, shall elect a new chairperson of the board from the members and such other new officers as the board deems necessary.

**Source:** Laws 1953, c. 335, § 12, p. 1103; Laws 1969, c. 575, § 1, p. 2321; Laws 2003, LB 56, § 4.

**71-2607 Board; meetings; notice; open to public.**

The State Board of Health shall meet at least once each quarter and at such other times as it deems necessary. Special meetings may be held upon the call of the chairperson or pursuant to a call signed by five other members of which the chairperson and the other members of the board shall have at least three days' notice. All regular meetings shall be held in suitable offices to be provided in the state office building described in section 81-1108.37 or elsewhere. A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the members of the board shall be deemed to be the act of the board. All meetings shall be open to the public. The minutes of the meetings shall show the action of the board on matters presented and shall be open to public inspection.

**Source:** Laws 1953, c. 335, § 13, p. 1103; Laws 1969, c. 575, § 2, p. 2322; Laws 2003, LB 56, § 5.

**71-2608 Repealed. Laws 1981, LB 249, § 8.**

**71-2609 Repealed. Laws 1996, LB 1044, § 985.**

**71-2610 Board; advise Division of Public Health of the Department of Health and Human Services.**

The State Board of Health shall advise the Division of Public Health of the Department of Health and Human Services regarding:

- (1) Rules and regulations for the government of the division;
- (2) The policies of the division as they relate to support provided to the board;
- (3) The policies of the division concerning the professions and occupations described in section 71-2610.01;
- (4) Communication and cooperation among the professional boards; and

(5) Plans of organization or reorganization of the division.

**Source:** Laws 1953, c. 335, § 16, p. 1104; Laws 1981, LB 249, § 2; Laws 1982, LB 449, § 8; Laws 1982, LB 450, § 7; Laws 1982, LB 448, § 7; Laws 1987, LB 473, § 41; Laws 1996, LB 1044, § 632; Laws 2003, LB 56, § 6; Laws 2007, LB296, § 549.

**71-2610.01 Board; powers and duties.**

The State Board of Health shall:

(1) Adopt and promulgate rules and regulations for the government of the professions and occupations licensed, certified, registered, or issued permits by the Division of Public Health of the Department of Health and Human Services, including rules and regulations necessary to implement laws enforced by the division. These professions and occupations are those subject to the Asbestos Control Act, the Radiation Control Act, the Residential Lead-Based Paint Professions Practice Act, the Uniform Controlled Substances Act, the Uniform Credentialing Act, or the Wholesale Drug Distributor Licensing Act;

(2) Serve in an advisory capacity for other rules and regulations adopted and promulgated by the division, including those for health care facilities and environmental health services;

(3) Carry out its powers and duties under the Nebraska Regulation of Health Professions Act;

(4) Appoint and remove for cause members of health-related professional boards as provided in sections 38-158 to 38-167;

(5) At the discretion of the board, help mediate issues related to the regulation of health care professions except issues related to the discipline of health care professionals; and

(6) Have the authority to participate in the periodic review of the regulation of health care professions.

All funds rendered available by law may be used by the board in administering and effecting such purposes.

**Source:** Laws 1981, LB 249, § 3; Laws 1992, LB 1019, § 78; Laws 1996, LB 1044, § 633; Laws 1997, LB 307, § 186; Laws 1998, LB 1073, § 124; Laws 2000, LB 1115, § 71; Laws 2003, LB 56, § 7; Laws 2005, LB 256, § 93; Laws 2007, LB296 § 550; Laws 2007, LB463, § 1206.

**Cross References**

**Asbestos Control Act**, see section 71-6317.

**Boards:**

Appointment, see section 38-158 et seq.

Enumerated, see section 38-167.

**Nebraska Regulation of Health Professions Act**, see section 71-6201.

**Radiation Control Act**, see section 71-3519.

**Residential Lead-Based Paint Professions Practice Act**, see section 71-6318.

**Uniform Controlled Substances Act**, see section 28-401.01.

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

**Wholesale Drug Distributor Licensing Act**, see section 71-7427.

**71-2611 Board; immunity.**

No member of the State Board of Health shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made



within the scope of the functions of such board while acting as an agent of the state if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

**Source:** Laws 2003, LB 56, § 8.

**71-2612 Repealed. Laws 1981, LB 249, § 8.**

**71-2613 Repealed. Laws 1981, LB 249, § 8.**

**71-2614 Repealed. Laws 1981, LB 249, § 8.**

**71-2615 Repealed. Laws 1981, LB 249, § 8.**

**71-2616 Repealed. Laws 1981, LB 249, § 8.**

**71-2617 Health and Human Services Reimbursement Fund; created; purpose; investment.**

There is hereby created in the Department of Health and Human Services a cash fund to be known as the Health and Human Services Reimbursement Fund. Any money in the Department of Health and Human Services Regulation and Licensure Reimbursement Fund on July 1, 2007, shall be transferred to the Health and Human Services Reimbursement Fund. The fund shall be used for payment of services performed for the department for inspection and licensing of hospitals and nursing homes under Title XIX of the federal Social Security 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 1971, LB 224, § 1; Laws 1996, LB 1044, § 634; Laws 2007, LB296, § 551.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-2618 Repealed. Laws 1996, LB 1044, § 985.**

**71-2618.01 Repealed. Laws 1999, LB 13, § 1.**

**71-2619 Fees; establish; disposition.**

(1) The Department of Health and Human Services may by regulation establish fees to defray the costs of providing specimen containers, shipping outfits, and related supplies and fees to defray the costs of certain laboratory examinations as requested by individuals, firms, corporations, or governmental agencies in the state. Fees for the provision of certain classes of shipping outfits or specimen containers shall be no more than the actual cost of materials, labor, and delivery. Fees for the provision of shipping outfits may be made when no charge is made for service.

(2) Fees may be established by regulation for chemical or microbiological examinations of various categories of water samples. Fees established for examination of water to ascertain qualities for domestic, culinary, and associated uses shall be set to defray no more than the actual cost of the tests in the following categories: (a) Inorganic chemical assays; (b) organic pollutants; and

(c) bacteriological examination to indicate sanitary quality as coliform density by membrane filter test or equivalent test.

(3) Fees for examinations of water from lakes, streams, impoundments, or similar sources, from wastewaters, or from ground water for industrial or agricultural purposes may be charged in amounts established by regulation but shall not exceed one and one-half times the limits set by regulation for examination of domestic waters.

(4) Fees may be established by regulation for chemical or microbiological examinations of various categories of samples to defray no more than the actual cost of testing. Such fees may be charged for:

- (a) Any specimen submitted for radiochemical analysis or characterization;
- (b) Any material submitted for chemical characterization or quantitation; and
- (c) Any material submitted for microbiological characterization.

(5) Fees may be established by regulation for the examinations of certain categories of biological and clinical specimens to defray no more than the actual costs of testing. Such fees may be charged for examinations pursuant to law or regulation of:

- (a) Any specimen submitted for chemical examination for assessment of health status or functional impairment;
- (b) Any specimen submitted for microbiological examination which is not related to direct human contact with the microbiological agent; and
- (c) A specimen submitted for microbiological examination or procedure by an individual, firm, corporation, or governmental unit other than the department.

(6) The department shall not charge fees for tests that include microbiological isolation, identification examination, or other laboratory examination for the following:

- (a) A contagious disease when the department is authorized by law or regulation to directly supervise the prevention, control, or surveillance of such contagious disease;
- (b) Any emergency when the health of the people of any part of the state is menaced or exposed pursuant to section 71-502; and
- (c) When adopting or enforcing special quarantine and sanitary regulations authorized by the department.

(7) Combinations of different tests or groups of tests submitted together may be offered at rates less than those set for individual tests as allowed in this section and shall defray the actual costs.

(8) Fees may be established by regulation to defray no more than the actual costs of certifying laboratories, inspecting laboratories, and making laboratory agreements between the department and laboratories other than the Department of Health and Human Services, Division of Public Health, Environmental Laboratory for the purpose of conducting analyses of drinking water as prescribed in section 71-5306. For each laboratory applying for certification, fees shall include (a) an annual fee not to exceed one thousand eight hundred dollars per laboratory and (b) an inspection fee not to exceed three thousand dollars per certification period for each laboratory located in this state.

(9) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

**Source:** Laws 1973, LB 583, § 2; Laws 1983, LB 617, § 21; Laws 1986, LB 1047, § 4; Laws 1996, LB 1044, § 636; Laws 2007, LB296, § 552; Laws 2008, LB928, § 20.

#### **71-2620 Agreements for laboratory tests; contents.**

The Division of Public Health of the Department of Health and Human Services may enter into agreements, not exceeding one year in duration, with any other governmental agency relative to the provision of certain laboratory tests and services to the agency. Such services shall be provided as stipulated in the agreement and for such fee, either lump sum or by the item, as is mutually agreed upon and as complies with the provisions of section 71-2619. All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

**Source:** Laws 1973, LB 583, § 3; Laws 1996, LB 1044, § 637; Laws 2001, LB 432, § 11; Laws 2007, LB296, § 553; Laws 2008, LB928, § 21.

#### **71-2621 Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.**

All fees collected for laboratory tests and services pursuant to sections 71-2619 and 71-2620 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, which shall be used to partially defray the costs of labor, operations, supplies, and materials in the operations of the Department of Health and Human Services, Division of Public Health, Environmental Laboratory.

**Source:** Laws 1973, LB 583, § 4; Laws 1996, LB 1044, § 638; Laws 2007, LB296, § 554; Laws 2008, LB928, § 22.

#### **71-2622 Private water supply; private sewage disposal facilities; inspection; fees.**

The Department of Health and Human Services shall collect a fee of not less than sixty nor more than one hundred dollars, as determined by regulation, for each inspection of private water supply or private sewage disposal facilities requested of and made by the department in order for the person requesting the inspection to qualify for any type of commercial loan, guarantee, or other type of payment or benefit from any commercial agency or enterprise to the person applying for or receiving the same or to meet the requirements of any federal governmental agency, including, but not limited to, the Farmers Home Administration, the Federal Housing Administration, and the United States Department of Veterans Affairs, that such an inspection be conducted as a condition of applying for or receiving any type of grant, loan, guarantee, or other type of payment or benefit from such agency to the person applying for or receiving the

same. All fees so collected shall be paid into the state treasury and by the State Treasurer credited to the Health and Human Services Cash Fund.

**Source:** Laws 1973, LB 583, § 5; Laws 1978, LB 814, § 1; Laws 1983, LB 617, § 22; Laws 1991, LB 2, § 13; Laws 1996, LB 1044, § 639; Laws 2007, LB296, § 555.

**71-2623 Repealed. Laws 1992, LB 860, § 8.**

**ARTICLE 27**

**PRACTICE OF MASSAGE**

**Cross References**

**Equine, cat, and dog massage practice**, see sections 38-3307.02 and 38-3321.

**Massage Therapy Practice Act**, see section 38-1701.

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

**Section**

- 71-2701. Transferred to section 71-1,278.
- 71-2702. Transferred to section 71-1,279.
- 71-2703. Repealed. Laws 1988, LB 1100, § 184.
- 71-2704. Repealed. Laws 1988, LB 1100, § 184.
- 71-2704.01. Repealed. Laws 1988, LB 1100, § 184.
- 71-2705. Transferred to section 71-1,281.
- 71-2706. Repealed. Laws 1988, LB 1100, § 184.
- 71-2707. Repealed. Laws 1988, LB 1100, § 184.
- 71-2708. Repealed. Laws 1988, LB 1100, § 184.
- 71-2709. Repealed. Laws 1988, LB 1100, § 184.
- 71-2710. Repealed. Laws 1988, LB 1100, § 184.
- 71-2711. Repealed. Laws 1988, LB 1100, § 184.
- 71-2712. Transferred to section 71-1,280.
- 71-2713. Repealed. Laws 1988, LB 1100, § 184.
- 71-2714. Repealed. Laws 1988, LB 1100, § 184.
- 71-2715. Repealed. Laws 1988, LB 1100, § 184.
- 71-2716. Repealed. Laws 1988, LB 1100, § 184.
- 71-2717. Repealed. Laws 1988, LB 1100, § 184.
- 71-2718. Repealed. Laws 1988, LB 1100, § 184.
- 71-2719. Repealed. Laws 1988, LB 1100, § 184.

**71-2701 Transferred to section 71-1,278.**

**71-2702 Transferred to section 71-1,279.**

**71-2703 Repealed. Laws 1988, LB 1100, § 184.**

**71-2704 Repealed. Laws 1988, LB 1100, § 184.**

**71-2704.01 Repealed. Laws 1988, LB 1100, § 184.**

**71-2705 Transferred to section 71-1,281.**

**71-2706 Repealed. Laws 1988, LB 1100, § 184.**

**71-2707 Repealed. Laws 1988, LB 1100, § 184.**

**71-2708 Repealed. Laws 1988, LB 1100, § 184.**

**71-2709 Repealed. Laws 1988, LB 1100, § 184.**

**71-2710 Repealed. Laws 1988, LB 1100, § 184.**

**71-2711 Repealed. Laws 1988, LB 1100, § 184.**

**71-2712 Transferred to section 71-1,280.**

**71-2713 Repealed. Laws 1988, LB 1100, § 184.**

**71-2714 Repealed. Laws 1988, LB 1100, § 184.**

**71-2715 Repealed. Laws 1988, LB 1100, § 184.**

**71-2716 Repealed. Laws 1988, LB 1100, § 184.**

**71-2717 Repealed. Laws 1988, LB 1100, § 184.**

**71-2718 Repealed. Laws 1988, LB 1100, § 184.**

**71-2719 Repealed. Laws 1988, LB 1100, § 184.**

**ARTICLE 28**

**PHYSICAL THERAPY**

**Cross References**

**Physical Therapy Licensure Compact**, see section 38-4001.

**Physical Therapy Practice Act**, see section 38-2901.

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

**Section**

- 71-2801. Repealed. Laws 2006, LB 994, § 162.
- 71-2802. Repealed. Laws 2006, LB 994, § 162.
- 71-2803. Transferred to section 71-1,383.
- 71-2803.01. Repealed. Laws 2006, LB 994, § 162.
- 71-2804. Transferred to section 71-1,388.
- 71-2805. Repealed. Laws 2006, LB 994, § 162.
- 71-2806. Repealed. Laws 1988, LB 1100, § 185.
- 71-2807. Transferred to section 71-1,389.
- 71-2808. Repealed. Laws 2006, LB 994, § 162.
- 71-2809. Repealed. Laws 2006, LB 994, § 162.
- 71-2810. Transferred to section 71-1,385.
- 71-2811. Repealed. Laws 2006, LB 994, § 162.
- 71-2812. Repealed. Laws 2006, LB 994, § 162.
- 71-2813. Repealed. Laws 1988, LB 1100, § 185.
- 71-2814. Repealed. Laws 2006, LB 994, § 162.
- 71-2815. Repealed. Laws 2006, LB 994, § 162.
- 71-2816. Repealed. Laws 2006, LB 994, § 162.
- 71-2817. Repealed. Laws 2006, LB 994, § 162.
- 71-2818. Repealed. Laws 1988, LB 1100, § 185.
- 71-2819. Repealed. Laws 2006, LB 994, § 162.
- 71-2820. Repealed. Laws 2006, LB 994, § 162.
- 71-2821. Repealed. Laws 2006, LB 994, § 162.
- 71-2822. Repealed. Laws 2006, LB 994, § 162.
- 71-2823. Repealed. Laws 2006, LB 994, § 162.

**71-2801 Repealed. Laws 2006, LB 994, § 162.**

**71-2802 Repealed. Laws 2006, LB 994, § 162.**

**71-2803 Transferred to section 71-1,383.**

**71-2803.01 Repealed. Laws 2006, LB 994, § 162.**

**71-2804 Transferred to section 71-1,388.**

- 71-2805 Repealed. Laws 2006, LB 994, § 162.
- 71-2806 Repealed. Laws 1988, LB 1100, § 185.
- 71-2807 Transferred to section 71-1,389.
- 71-2808 Repealed. Laws 2006, LB 994, § 162.
- 71-2809 Repealed. Laws 2006, LB 994, § 162.
- 71-2810 Transferred to section 71-1,385.
- 71-2811 Repealed. Laws 2006, LB 994, § 162.
- 71-2812 Repealed. Laws 2006, LB 994, § 162.
- 71-2813 Repealed. Laws 1988, LB 1100, § 185.
- 71-2814 Repealed. Laws 2006, LB 994, § 162.
- 71-2815 Repealed. Laws 2006, LB 994, § 162.
- 71-2816 Repealed. Laws 2006, LB 994, § 162.
- 71-2817 Repealed. Laws 2006, LB 994, § 162.
- 71-2818 Repealed. Laws 1988, LB 1100, § 185.
- 71-2819 Repealed. Laws 2006, LB 994, § 162.
- 71-2820 Repealed. Laws 2006, LB 994, § 162.
- 71-2821 Repealed. Laws 2006, LB 994, § 162.
- 71-2822 Repealed. Laws 2006, LB 994, § 162.
- 71-2823 Repealed. Laws 2006, LB 994, § 162.

## ARTICLE 29

### MOSQUITO ABATEMENT

#### Section

- 71-2901. Repealed. Laws 1983, LB 367, § 1.
- 71-2902. Repealed. Laws 1983, LB 367, § 1.
- 71-2903. Repealed. Laws 1983, LB 367, § 1.
- 71-2904. Repealed. Laws 1983, LB 367, § 1.
- 71-2905. Repealed. Laws 1983, LB 367, § 1.
- 71-2906. Repealed. Laws 1983, LB 367, § 1.
- 71-2907. Repealed. Laws 1983, LB 367, § 1.
- 71-2908. Repealed. Laws 1983, LB 367, § 1.
- 71-2909. Repealed. Laws 1983, LB 367, § 1.
- 71-2910. Repealed. Laws 1983, LB 367, § 1.
- 71-2911. Repealed. Laws 1983, LB 367, § 1.
- 71-2912. Repealed. Laws 1983, LB 367, § 1.
- 71-2913. Repealed. Laws 1983, LB 367, § 1.
- 71-2914. Repealed. Laws 1983, LB 367, § 1.
- 71-2915. Repealed. Laws 1983, LB 367, § 1.
- 71-2916. Repealed. Laws 1983, LB 367, § 1.
- 71-2917. Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; powers.

Section

71-2918. Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; nuisance; abatement; expenses; lien.

**71-2901 Repealed. Laws 1983, LB 367, § 1.**

**71-2902 Repealed. Laws 1983, LB 367, § 1.**

**71-2903 Repealed. Laws 1983, LB 367, § 1.**

**71-2904 Repealed. Laws 1983, LB 367, § 1.**

**71-2905 Repealed. Laws 1983, LB 367, § 1.**

**71-2906 Repealed. Laws 1983, LB 367, § 1.**

**71-2907 Repealed. Laws 1983, LB 367, § 1.**

**71-2908 Repealed. Laws 1983, LB 367, § 1.**

**71-2909 Repealed. Laws 1983, LB 367, § 1.**

**71-2910 Repealed. Laws 1983, LB 367, § 1.**

**71-2911 Repealed. Laws 1983, LB 367, § 1.**

**71-2912 Repealed. Laws 1983, LB 367, § 1.**

**71-2913 Repealed. Laws 1983, LB 367, § 1.**

**71-2914 Repealed. Laws 1983, LB 367, § 1.**

**71-2915 Repealed. Laws 1983, LB 367, § 1.**

**71-2916 Repealed. Laws 1983, LB 367, § 1.**

**71-2917 Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; powers.**

Any county and any city of the primary class located therein shall have the power jointly or severally to take all necessary and proper steps for the extermination of mosquitoes, flies, or other insects of public health importance within their respective areas of jurisdiction and shall have the following powers:

(1) To abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies, or other insects of public health importance within their areas;

(2) To purchase such supplies and materials and to employ such labor as may be necessary or proper in furtherance of the objectives set forth in sections 71-2917 and 71-2918;

(3) To make contracts to indemnify or compensate the owner of land or other property for any injury or damage necessarily caused by the exercise of these powers or arising out of the using, taking, or damaging of property for any of the purposes set forth in sections 71-2917 and 71-2918;

(4) To exercise the power of eminent domain and to take private property for public use within their respective areas of jurisdiction for the purpose of carrying out the provisions of this section, and all damages sustained by the

owners of the property taken shall be ascertained and paid for in the manner set forth in sections 76-704 to 76-724, and amendments thereto;

(5) Generally to do any and all things necessary or incidental to the powers granted in sections 71-2917 and 71-2918, including but not limited to the right to enter upon private property for all necessary inspections and to carry out the objectives set forth in sections 71-2917 and 71-2918; and

(6) To appropriate the necessary funds to carry out the objectives contained in sections 71-2917 and 71-2918.

**Source:** Laws 1961, c. 344, § 1, p. 1096.

**71-2918 Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; nuisance; abatement; expenses; lien.**

Any county and any city of the primary class located therein shall have the powers, jointly or severally:

(1) To declare as a nuisance any stagnant pool of water or other breeding place for mosquitoes, flies, or other insects of public health importance within their areas;

(2) To direct the owner or user of the property upon which such nuisance exists to abate such nuisance; and

(3) If such owner or user refuses, fails, or neglects to abate such nuisance, after proper notice and lapse of a reasonable time for complying, to take any necessary and proper steps to abate such nuisance. Any such county and city shall have and acquire a lien for the expense thereof against the property upon which the expense was incurred, which lien shall be enforceable in the same manner as liens are enforced against buildings and lots for labor and material furnished by contract with the owner.

**Source:** Laws 1961, c. 344, § 2, p. 1097.

**ARTICLE 30**

**NEBRASKA MENTAL HEALTH FIRST AID TRAINING**

Section

- 71-3001. Act, how cited.
- 71-3002. Legislative findings.
- 71-3003. Terms, defined.
- 71-3004. Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.
- 71-3005. Efficacy of mental health first aid training program; behavioral health regions; report.
- 71-3006. Behavioral health regions; duties.
- 71-3007. Legislative intent.

**71-3001 Act, how cited.**

Sections 71-3001 to 71-3007 shall be known and may be cited as the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 2.

**71-3002 Legislative findings.**

The Legislature finds that:

(1) National statistics show that one in four Americans will face a mental illness in his or her lifetime;



(2) Mental health first aid builds an understanding of how mental illness affects Nebraskans, provides an overview of common treatments, and teaches basic skills for providing assistance to a person who may be developing symptoms or experiencing a crisis;

(3) A mental health first aid program is an education program recognized on the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices; and

(4) The Behavioral Health Education Center administered by the University of Nebraska Medical Center has conducted a series of mental health first aid training courses and the experience of providing such courses may be utilized regarding the implementation of a mental health first aid training program as prescribed by the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 3.

#### **71-3003 Terms, defined.**

For purposes of the Nebraska Mental Health First Aid Training Act:

(1) Behavioral health regions means the behavioral health regions established pursuant to section 71-807; and

(2) Mental health first aid means the help provided to a person who is experiencing a mental health or substance abuse problem or in a mental health crisis before appropriate professional assistance or other supports are secured.

**Source:** Laws 2014, LB901, § 4.

#### **71-3004 Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.**

(1) The Division of Behavioral Health of the Department of Health and Human Services shall establish a mental health first aid training program, using contracts through the behavioral health regions, to help the public identify and understand the signs of a mental illness or substance abuse problem or a mental health crisis and to provide the public with skills to help a person who is developing or experiencing a mental health or substance abuse problem or a mental health crisis and to de-escalate crisis situations if needed. The training program shall provide an interactive mental health first aid training course administered by the state's regional behavioral health authorities. Instructors in the training program shall be certified by a national authority for Mental Health First Aid USA or a similar organization. The training program shall work cooperatively with local entities to provide training for individuals to become instructors.

(2) The mental health first aid training program shall be designed to train individuals to accomplish the following objectives as deemed appropriate considering the trainee's age:

(a) Help the public identify, understand, and respond to the signs of mental illness and substance abuse;

(b) Emphasize the need to reduce the stigma of mental illness; and

(c) Assist a person who is believed to be developing or has developed a mental health or substance abuse problem or who is believed to be experiencing a mental health crisis.

**Source:** Laws 2014, LB901, § 5.

**71-3005 Efficacy of mental health first aid training program; behavioral health regions; report.**

The Division of Behavioral Health of the Department of Health and Human Services shall ensure that evaluative criteria are established which measure the efficacy of the mental health first aid training program, including trainee feedback, with the objective of helping the public identify, understand, and respond to the signs of mental illness and alcohol and substance abuse. The behavioral health regions shall submit an aggregated annual report electronically to the Legislature on trainee demographics and outcomes of the established criteria.

**Source:** Laws 2014, LB901, § 6.

**71-3006 Behavioral health regions; duties.**

The behavioral health regions shall offer services to and work with agencies and organizations, including, but not limited to, schools, universities, colleges, the State Department of Education, the Department of Veterans' Affairs, law enforcement agencies, and local health departments, to develop a program that offers grants to implement the Nebraska Mental Health First Aid Training Act in ways that are representative and inclusive with respect to the economic and cultural diversity of this state.

**Source:** Laws 2014, LB901, § 7.

**71-3007 Legislative intent.**

It is the intent of the Legislature to appropriate one hundred thousand dollars annually to the Department of Health and Human Services to carry out the Nebraska Mental Health First Aid Training Act.

**Source:** Laws 2014, LB901, § 8.

## ARTICLE 31 RECREATION CAMPS

### Cross References

**Membership Campground Act**, see section 76-2101.

#### Section

- 71-3101. Terms, defined.
- 71-3102. Permit; application; issuance; fees; disposition.
- 71-3103. Annual inspection; duty of department.
- 71-3104. Permit; revocation; grounds.
- 71-3105. Rules and regulations.
- 71-3106. Plans; submit to department.
- 71-3107. Violations; penalty.

**71-3101 Terms, defined.**

As used in sections 71-3101 to 71-3107, unless the context otherwise requires:

(1) Recreation camp shall mean one or more temporary or permanent tents, buildings, structures, or site pads, together with the tract of land appertaining thereto, established or maintained for more than a forty-eight-hour period as living quarters or sites used for purposes of sleeping or the preparation and the serving of food extending beyond the limits of a family group for children or adults, or both, for recreation, education, or vacation purposes, and including

facilities located on either privately or publicly owned lands except hotels or inns;

(2) Person shall mean any individual or group of individuals, association, partnership, limited liability company, or corporation; and

(3) Department shall mean the Department of Health and Human Services.

**Source:** Laws 1959, c. 328, § 1, p. 1193; Laws 1993, LB 121, § 432; Laws 1996, LB 1044, § 641; Laws 1997, LB 622, § 106; Laws 2007, LB296, § 556.

**71-3102 Permit; application; issuance; fees; disposition.**

Before any person shall directly or indirectly operate a recreation camp he or she shall make an application to the department and receive a valid permit for the operation of such camp. Application for such a permit shall be made at least thirty days prior to the proposed operation of the camp and shall be on forms supplied by the department upon request. The application shall be in such form and contain such information as the department may deem necessary to its determination that the recreation camp will be operated and maintained in such a manner as to protect and preserve the health and safety of the persons using the camp and shall be accompanied by an annual fee. The department may establish fees by regulation to defray the actual costs of issuing the permit, conducting inspections, and other expenses incurred by the department in carrying out this section. If the applicant is an individual, the application shall include the applicant's social security number. Where a person operates or is seeking to operate more than one recreation camp, a separate application shall be made for each camp. Such a permit shall not be transferable or assignable. It shall expire one year from the date of its issuance, upon a change of operator of the camp, or upon revocation. If the department finds, after investigation, that the camp or the proposed operation thereof conforms, or will conform, to the minimum standards for recreation camps, a permit on a form prescribed by the department shall be issued for operation of the camp. All fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

**Source:** Laws 1959, c. 328, § 2, p. 1193; Laws 1965, c. 419, § 7, p. 1345; Laws 1978, LB 813, § 2; Laws 1996, LB 1044, § 642; Laws 1997, LB 622, § 107; Laws 1997, LB 752, § 179; Laws 2007, LB296, § 557.

**71-3103 Annual inspection; duty of department.**

It shall be the duty of the department to make at least one annual inspection of each recreation camp. The duly authorized representatives of the department shall have the right of entry and access to any such camp at any reasonable time.

Where, upon inspection it is found that there is failure to protect the health and safety of the persons using the camp, or a failure to comply with the camp regulations prescribed by the department, the department shall give notice to the camp operator of such failure, which notice shall set forth the reason or reasons for such failure.

**Source:** Laws 1959, c. 328, § 3, p. 1194.

**71-3104 Permit; revocation; grounds.**

(1) A permit may be temporarily suspended by the department for failure to protect the health and safety of the occupants of the camp or failure to comply with the camp regulations prescribed by the department.

(2) A permit may be revoked at any time, after notice and opportunity for a fair hearing held by the department, if it is found that the camp for which the permit is issued is maintained or operated in violation of law or of any regulations applicable to a camp or in violation of the conditions stated in the permit. A new permit shall not be issued until the department is satisfied that the camp will be operated in compliance with the law and regulations.

**Source:** Laws 1959, c. 328, § 4, p. 1194; Laws 1996, LB 1044, § 643; Laws 2007, LB296, § 558.

**71-3105 Rules and regulations.**

The department is authorized to and shall formulate, adopt, publish, promulgate, and enforce such reasonable rules and regulations as it deems necessary to enforce the provisions of sections 71-3101 to 71-3107 and to protect the health and welfare of persons in attendance at recreation camps.

**Source:** Laws 1959, c. 328, § 5, p. 1194.

**71-3106 Plans; submit to department.**

Properly prepared plans for all recreation camps which are hereafter constructed, reconstructed, or extensively altered shall be submitted to the department before such work is begun. Signed approval shall be obtained from the department.

**Source:** Laws 1959, c. 328, § 6, p. 1194.

**71-3107 Violations; penalty.**

Any person who shall violate any of the provisions of sections 71-3101 to 71-3107 or of the regulations or standards promulgated hereunder shall be guilty of a Class V misdemeanor.

**Source:** Laws 1959, c. 328, § 7, p. 1195; Laws 1977, LB 39, § 170.

**ARTICLE 32****PRIVATE DETECTIVES**

## Section

- 71-3201. Terms, defined.
- 71-3202. License required; false representation of employment by licensee.
- 71-3203. Applicability of sections.
- 71-3204. Secretary of State; rules and regulations; fees.
- 71-3205. License; application; criminal history record check; investigation; qualifications; fee.
- 71-3206. Applicant for license; disqualification.
- 71-3207. License; bond; conditions.
- 71-3208. License; renewal; form and content; posting.
- 71-3209. License; renewal; term; renewal fee; renewal application.
- 71-3210. Secretary of State; denial, suspension, or revocation of license; grounds.
- 71-3211. Appeal; procedure.
- 71-3212. Licensee; agents and employees; compliance required.
- 71-3213. Violations; penalty.

**71-3201 Terms, defined.**

As used in sections 71-3201 to 71-3213, unless the context otherwise requires:

- (1) Applicant shall mean any person who makes application for a license under such sections;
- (2) License shall mean a license to engage in the private detective business as a private detective, as a private detective agency, or as a plain clothes investigator in the State of Nebraska;
- (3) Licensee shall mean any person licensed under such sections;
- (4) Person shall mean and include any individual, firm, partnership, limited liability company, association, company, corporation, or other legal entity;
- (5) Plain clothes investigator shall mean and include any individual, other than a private detective, who as an employee and on behalf of a private detective agency without any identifying uniform performs services consisting wholly or partially of detective or investigative activity within the scope of the private detective business;
- (6) Private detective shall mean any individual who as a sole proprietor engages in the private detective business without the assistance of any employee;
- (7) Private detective agency shall mean any person who as other than a private detective or a plain clothes investigator engages in the private detective business;
- (8) Private detective business shall mean and include any private business engaged in by any person defined in subdivision (4) of this section who advertises or holds himself or herself out to the public, in any manner, as being engaged in the secret service or private policing business; and
- (9) Secretary shall mean the Secretary of State.

**Source:** Laws 1959, c. 329, § 1, p. 1195; Laws 1993, LB 121, § 433.

**71-3202 License required; false representation of employment by licensee.**

No person shall, in the State of Nebraska after July 1, 1959, by any direct or indirect means, engage in the private detective business, as a private detective, as a private detective agency, or as a plain clothes investigator, act or assume to act as a licensee, or represent himself to be a licensee unless such person is duly licensed and holds a valid license under the provisions of sections 71-3201 to 71-3213; and no person shall in the State of Nebraska falsely represent that he is employed by or represents a licensee.

**Source:** Laws 1959, c. 329, § 2, p. 1196.

**71-3203 Applicability of sections.**

The provisions of sections 71-3201 to 71-3213 shall not prevent the proper local authorities of any city or village, by ordinance or other proper manner within the exercise of the police power of such city or village, from appointing special policemen for such purposes and subject to such proper and reasonable restrictions, terms, and conditions as such local authorities may prescribe; but such police power shall not be so exercised as to infringe upon or nullify any

license duly issued and held under the provisions of sections 71-3201 to 71-3213.

**Source:** Laws 1959, c. 329, § 3, p. 1197.

**71-3204 Secretary of State; rules and regulations; fees.**

(1) The secretary shall have power and authority to adopt and promulgate and to alter from time to time rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 71-3201 to 71-3213.

(2) The secretary shall establish fees for initial and renewal applications for applicants at rates sufficient to cover the costs of administering sections 71-3201 to 71-3213.

**Source:** Laws 1959, c. 329, § 4, p. 1197; Laws 2002, Second Spec. Sess., LB 25, § 1.

**71-3205 License; application; criminal history record check; investigation; qualifications; fee.**

(1) Any person desiring to engage in the private detective business in the State of Nebraska and desiring to be licensed under sections 71-3201 to 71-3213 shall file with the secretary an application for a license. The application shall be made on a suitable form prescribed by the secretary; shall include the applicant's social security number if the applicant is an individual; shall be accompanied when filed by an application fee established pursuant to section 71-3204; shall be signed and verified by each individual connected with the applicant to whom the requirements of subsection (2) of this section apply; and may contain such information as may be required by the secretary. The applicant shall also submit two legible sets of fingerprints to the Nebraska State Patrol for a national criminal history record check through the Federal Bureau of Investigation.

(2) The secretary shall issue to the person if qualified therefor a nontransferable license to engage in the private detective business as a private detective, as a private detective agency, or as a plain clothes investigator in the State of Nebraska as follows: If the applicant is an individual, the individual; if the applicant is a corporation, each of its individual officers performing the duties of the president, the secretary, and the treasurer of the corporation and the duties of the manager of the business of the corporation in the State of Nebraska; or if the applicant is any person other than an individual or a corporation, each of the individual partners, members, managers, officers, or other individuals having a right to participate in the management of the applicant's business in the State of Nebraska.

(3) The applicant shall be at least twenty-one years of age, a citizen of the United States, and of good moral character, temperate habits, and good reputation for truth, honesty, and integrity and shall have such experience and competence in the detective business or otherwise as the secretary may determine to be reasonably necessary for the individual to perform the duties of his or her position in a manner consistent with the public interest and welfare.

(4) No license issued under sections 71-3201 to 71-3213 shall be issued or renewed to any person who in any manner engages in the business of debt collection in the State of Nebraska as licensee or employee of a licensee as provided in the Collection Agency Act. If any collection agency, or any person

in the employ of such agency with knowledge of the owner or operator of such agency, engages in the business of a private detective or represents to others that he or she is engaged in such business, it shall be cause for suspension or revocation of such agency's license as a collection agency.

(5) Prior to the issuance of the license, the secretary shall notify the Nebraska State Patrol, and the patrol shall investigate the character and reputation of the applicant respecting his or her fitness to engage in the business of a private detective. Upon completion of the investigation, the patrol shall notify the secretary of the results of the investigation within ninety days after the date of the application. The license shall be issued by the secretary unless he or she has received within ninety days after the application is made for the license a report of investigation from the patrol stating that the applicant is not of the proper character and reputation to engage in the business of a private detective.

**Source:** Laws 1959, c. 329, § 5, p. 1197; Laws 1965, c. 426, § 1, p. 1363; Laws 1967, c. 457, § 1, p. 1425; Laws 1982, LB 928, § 54; Laws 1987, LB 175, § 1; Laws 1993, LB 261, § 21; Laws 1997, LB 752, § 180; Laws 2002, Second Spec. Sess., LB 25, § 2; Laws 2003, LB 267, § 2.

**Cross References**

Collection Agency Act, see section 45-601.

**71-3206 Applicant for license; disqualification.**

No license shall be issued to any individual applicant, or to any applicant other than an individual, if such individual applicant or if any one or more of those individuals participating or intending to participate directly in the management of such other applicant's business in the State of Nebraska has been convicted in the State of Nebraska or in any other state or territory of the United States of any felony or any misdemeanor involving a sex offense or involving moral turpitude; *Provided*, this section shall not apply when a full pardon has been given.

**Source:** Laws 1959, c. 329, § 6, p. 1198.

**71-3207 License; bond; conditions.**

Before the license may be issued or renewed, the applicant shall file and the licensee shall continuously maintain with the secretary a surety bond executed by a surety company authorized to do business in the State of Nebraska in the sum of ten thousand dollars conditioned for the faithful and honest conduct and compliance with the provisions of sections 71-3201 to 71-3213 upon the part of such applicant or licensee and upon the part of any plain clothes investigator employed by such applicant or licensee; and any person injured by the willful, malicious, or wrongful act of such applicant or licensee or any employee thereof within the scope of the license may bring an action on such bond in his own name to recover his damages; *Provided*, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice to the secretary; *Provided*, that such cancellation shall not affect any liability on the bond which accrued prior thereto.

**Source:** Laws 1959, c. 329, § 7, p. 1198.

**71-3208 License; renewal; form and content; posting.**

The license when issued or renewed shall be of such form and content as the secretary may prescribe, shall be posted and prominently displayed in the licensee's principal place of engaging in the private detective business in the State of Nebraska, and shall include the name of the licensee, the name or names under which the licensee is licensed to engage in the private detective business in the State of Nebraska, and the number, date of issue or reissue and expiration date of the license.

**Source:** Laws 1959, c. 329, § 8, p. 1199.

**71-3209 License; renewal; term; renewal fee; renewal application.**

Each license issued or renewed by the secretary shall expire on June 30 of the first even-numbered year following its issuance and may be renewed by the secretary upon the payment by the licensee, not later than the expiration date, of the license renewal fee established pursuant to section 71-3204 and upon the submission by such licensee of such a license renewal application as the secretary may prescribe as reasonably necessary to ascertain such licensee's continued compliance with the provisions of sections 71-3201 to 71-3213.

**Source:** Laws 1959, c. 329, § 9, p. 1199; Laws 1965, c. 426, § 2, p. 1364; Laws 1982, LB 928, § 55; Laws 2002, Second Spec. Sess., LB 25, § 3.

**71-3210 Secretary of State; denial, suspension, or revocation of license; grounds.**

The secretary may from time to time, upon first giving the applicant or licensee an opportunity for a hearing on the matter, (1) deny any application for a license, (2) refuse to renew any license, (3) suspend any license for a time or upon a condition having a reasonable relation to the administration of the provisions of sections 71-3201 to 71-3213, or (4) revoke any license issued or renewed under the provisions of sections 71-3201 to 71-3213 (a) upon a determination that there has been a significant change in those individuals participating directly in the management of the applicant's or licensee's business in the State of Nebraska or that, (b) by reason of such applicant's or licensee's failure to comply with the provisions of sections 71-3201 to 71-3213, insolvency, bankruptcy or other bad or improper conduct upon the part of such applicant or licensee or upon the part of any officer, agent, or employee of such applicant or licensee within the scope of the office, authority, or employment of such officer, agent or employee, or (c) when for any other suitable reason the granting of a license to such applicant or the continuation of such licensee's license is not consistent with the public interest and welfare.

**Source:** Laws 1959, c. 329, § 10, p. 1199.

**71-3211 Appeal; procedure.**

Any applicant, licensee, or other person directly and adversely affected by any order of the secretary may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1959, c. 329, § 11, p. 1200; Laws 1988, LB 352, § 130.



Cross References

Administrative Procedure Act, see section 84-920.

**71-3212 Licensee; agents and employees; compliance required.**

It shall be the duty of every licensee and, so far as applicable, of every officer, agent, and employee of every licensee to comply with the provisions of sections 71-3201 to 71-3213 and with every applicable rule and regulation made and adopted by the secretary.

**Source:** Laws 1959, c. 329, § 12, p. 1200.

**71-3213 Violations; penalty.**

Any person who violates any provision of sections 71-3201 to 71-3213 or fails to perform any duty imposed upon such person by the provisions of sections 71-3201 to 71-3213 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1959, c. 329, § 13, p. 1200; Laws 1977, LB 39, § 171.

**ARTICLE 33**

**FLUORIDATION**

Section

- 71-3301. Repealed. Laws 1973, LB 449, § 4.
- 71-3302. Repealed. Laws 1973, LB 449, § 4.
- 71-3303. Repealed. Laws 1973, LB 449, § 4.
- 71-3304. Repealed. Laws 1973, LB 449, § 4.
- 71-3305. Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.
- 71-3306. Other entity; fluoride added to water supply; rules and regulations.

**71-3301 Repealed. Laws 1973, LB 449, § 4.**

**71-3302 Repealed. Laws 1973, LB 449, § 4.**

**71-3303 Repealed. Laws 1973, LB 449, § 4.**

**71-3304 Repealed. Laws 1973, LB 449, § 4.**

**71-3305 Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.**

(1) Except as otherwise provided in subsection (2) or (3) of this section, any city or village having a population of one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall add fluoride to the water supply for human consumption for such city or village as provided in the rules and regulations of the Department of Health and Human Services unless such water supply has sufficient amounts of naturally occurring fluoride as provided in such rules and regulations.

(2) Subsection (1) of this section does not apply if the voters of the city or village adopted an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply.

(3) If any city or village reaches a population of one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census after June 1, 2010, and is required to add fluoride to its water supply under

subsection (1) of this section, the city or village may adopt an ordinance to prohibit the addition of fluoride to such water supply. The ordinance may be placed on the ballot by a majority vote of the governing body of the city or village or by initiative pursuant to sections 18-2501 to 18-2538. Such proposed ordinance shall be voted upon at the next statewide general election after the population of the city or village reaches one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(4) Any rural water district organized under sections 46-1001 to 46-1020 that supplies water for human consumption to any city or village which is required to add fluoride to such water supply under this section shall not be responsible for any costs, equipment, testing, or maintenance related to such fluoridation unless such district has agreed with the city or village to assume such responsibilities.

**Source:** Laws 1973, LB 449, § 1; Laws 1975, LB 245, § 2; Laws 1982, LB 807, § 45; Laws 1996, LB 1044, § 644; Laws 2007, LB296, § 559; Laws 2008, LB245, § 1; Laws 2011, LB36, § 1; Laws 2017, LB113, § 53.

**71-3306 Other entity; fluoride added to water supply; rules and regulations.**

Any public or private entity not included in section 71-3305 which provides a water supply for human consumption and which is not required to add fluoride to such water supply may add fluoride to such water supply in the amount and manner prescribed by the rules and regulations of the Department of Health and Human Services.

**Source:** Laws 1973, LB 449, § 2; Laws 1996, LB 1044, § 645; Laws 2007, LB296, § 560.

**ARTICLE 34**

**REDUCTION IN MORBIDITY AND MORTALITY**

(a) GENERAL PROVISIONS

Section

- 71-3401. Information, statements, and data; furnish without liability.
- 71-3402. Publication of material; purpose; identity of person confidential.
- 71-3403. Information, interviews, reports, statements, data; privileged communications; not received in evidence.

(b) CHILD AND MATERNAL DEATHS

- 71-3404. Act, how cited; child deaths; maternal deaths; legislative findings and intent.
- 71-3405. Terms, defined.
- 71-3406. State Child and Maternal Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.
- 71-3407. Team; purposes; duties; powers.
- 71-3408. Chairperson; team coordinator; duties.
- 71-3409. Review of child deaths; review of maternal deaths; manner.
- 71-3410. Provision of information and records; subpoenas.
- 71-3411. Information and records; confidentiality; release; conditions; disclosure; limitations.

(a) GENERAL PROVISIONS

**71-3401 Information, statements, and data; furnish without liability.**

Any person, hospital, sanitarium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda,

or other data relating to the condition and treatment of any person to the Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any inhospital staff committee, or any joint venture of such entities to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

**Source:** Laws 1961, c. 347, § 1, p. 1105; Laws 1992, LB 860, § 4; Laws 1994, LB 1223, § 44; Laws 1996, LB 1044, § 646; Laws 2007, LB296, § 561.

**71-3402 Publication of material; purpose; identity of person confidential.**

The Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any inhospital staff committee, or any joint venture of such entities shall use or publish the material specified in section 71-3401 only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

**Source:** Laws 1961, c. 347, § 2, p. 1106; Laws 1992, LB 860, § 5; Laws 1994, LB 1223, § 45; Laws 1996, LB 1044, § 647; Laws 2007, LB296, § 562.

**71-3403 Information, interviews, reports, statements, data; privileged communications; not received in evidence.**

All information, interviews, reports, statements, memoranda, or other data furnished by reason of sections 71-3401 to 71-3403 and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the interested parties, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

**Source:** Laws 1961, c. 347, § 3, p. 1106.

(b) CHILD AND MATERNAL DEATHS

**71-3404 Act, how cited; child deaths; maternal deaths; legislative findings and intent.**

(1) Sections 71-3404 to 71-3411 shall be known and may be cited as the Child and Maternal Death Review Act.

(2) The Legislature finds and declares that it is in the best interests of the state, its residents, and especially the children of this state that the number and

causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

(3) The Legislature further finds and declares that it is in the best interests of the state and its residents that the number and causes of maternal death in this state be examined. There is a need for a comprehensive integrated review of all maternal deaths in Nebraska and a system for statewide retrospective review of existing records relating to each maternal death.

(4) It is the intent of the Legislature, by creation of the Child and Maternal Death Review Act, to:

(a) Identify trends from the review of past records to prevent future child and maternal deaths from similar causes when applicable;

(b) Recommend systematic changes for the creation of a cohesive method for responding to certain child and maternal deaths; and

(c) When appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

**Source:** Laws 1993, LB 431, § 1; Laws 2013, LB361, § 1.

**71-3405 Terms, defined.**

For purposes of the Child and Maternal Death Review Act:

(1) Child means a person from birth to eighteen years of age;

(2) Investigation of child death means a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, records of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01, educational records, emergency and paramedic records, and law enforcement reports;

(3) Investigation of maternal death means a review of existing records and other information regarding the woman from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(4) Maternal death means the death of a woman during pregnancy or the death of a postpartum woman;

(5) Postpartum woman means a woman during the period of time beginning when the woman ceases to be pregnant and ending one year after the woman ceases to be pregnant;

(6) Preventable child or maternal death means the death of any child or pregnant or postpartum woman which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child or maternal death includes, but is not limited to, the death of a child or pregnant or postpartum woman from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and

reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(7) Reasonable means taking into consideration the condition, circumstances, and resources available; and

(8) Team means the State Child and Maternal Death Review Team.

**Source:** Laws 1993, LB 431, § 2; Laws 2013, LB361, § 2; Laws 2014, LB853, § 46.

**71-3406 State Child and Maternal Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.**

(1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of twelve and a maximum of fifteen members to the State Child and Maternal Death Review Team. The core members shall be (a) a physician employed by the department, who shall be a permanent member and shall serve as the chairperson of the team, (b) a senior staff member with child protective services of the department, (c) a forensic pathologist, (d) a law enforcement representative, (e) the Inspector General of Nebraska Child Welfare, and (f) an attorney. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; a social worker; and members of organizations which represent hospitals or physicians. The department shall be responsible for the general administration of the activities of the team and shall employ or contract with a team coordinator to provide administrative support for the team.

(2) Members shall serve four-year terms with the exception of the chairperson. In the absence of the chairperson, the chief executive officer may appoint another member of the core team to serve as chairperson.

(3) The team shall not be considered a public body for purposes of the Open Meetings Act. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1993, LB 431, § 3; Laws 1996, LB 1044, § 648; Laws 1997, LB 307, § 187; Laws 1998, LB 1073, § 125; Laws 2003, LB 467, § 1; Laws 2004, LB 821, § 17; Laws 2007, LB296, § 563; Laws 2013, LB269, § 12; Laws 2013, LB361, § 3.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**71-3407 Team; purposes; duties; powers.**

(1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child or maternal deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child or maternal deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child or maternal deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child or maternal deaths in this state. The studies shall include, but not be limited to,

an analysis of the records of community, public, and private agency involvement with the children, the pregnant or postpartum women, and their families prior to and subsequent to the child or maternal deaths;

(b) Develop a protocol for retrospective investigation of child or maternal deaths by the team;

(c) Develop a protocol for collection of data regarding child or maternal deaths by the team;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child or maternal deaths;

(f) Educate the public regarding the incidence and causes of child or maternal deaths, the public role in preventing child or maternal deaths, and specific steps the public can undertake to prevent child or maternal deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties;

(g) Provide the Governor, the Legislature, and the public with annual reports which shall include the team's findings and recommendations for each of its duties. The team shall provide the annual report on or before each September 15. The reports submitted to the Legislature shall be submitted electronically; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

(3) The team may enter into consultation agreements with relevant experts to evaluate the information and records collected by the team. All of the confidentiality provisions of section 71-3411 shall apply to the activities of a consulting expert.

(4) The team may enter into written agreements with entities to provide for the secure storage of electronic data based on information and records collected by the team, including data that contains personal or incident identifiers. Such agreements shall provide for the protection of the security and confidentiality of the content of the information, including access limitations, storage of the information, and destruction of the information. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the data storage entity.

(5) The team may enter into agreements with a local public health department as defined in section 71-1626 to act as the agent of the team in conducting all information gathering and investigation necessary for the purposes of the Child and Maternal Death Review Act. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the agent.

(6) For purposes of this section, entity means an organization which provides collection and storage of data from multiple agencies but is not solely controlled by the agencies providing the data.

**Source:** Laws 1993, LB 431, § 4; Laws 2012, LB782, § 116; Laws 2012, LB1160, § 18; Laws 2013, LB361, § 4; Laws 2017, LB506, § 5.

**71-3408 Chairperson; team coordinator; duties.**

- (1) The chairperson of the team shall:
  - (a) Chair meetings of the team; and
  - (b) Ensure identification of strategies to prevent child or maternal deaths.
- (2) The team coordinator provided under subsection (1) of section 71-3406 shall:
  - (a) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, educational records, and other relevant items made available to the team;
  - (b) Ensure timely notification of the team members of an upcoming meeting;
  - (c) Ensure that all team reporting and data-collection requirements are met;
  - (d) Oversee adherence to the review process established by the Child and Maternal Death Review Act; and
  - (e) Perform such other duties as the team deems appropriate.

**Source:** Laws 1993, LB 431, § 5; Laws 2013, LB361, § 5.

**71-3409 Review of child deaths; review of maternal deaths; manner.**

- (1)(a) The team shall review all child deaths occurring on or after January 1, 1993, and before January 1, 2014, in three phases as provided in this subsection.
  - (b) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Health and Human Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.
  - (c) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional records described in section 71-3410. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.
  - (d) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.
- (2)(a) The team shall review all child deaths occurring on or after January 1, 2014, in the manner provided in this subsection.
  - (b) The members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.
  - (c) A review shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The members

may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

(3)(a) The team shall review all maternal deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, coroner's report or autopsy report if done, and indicators of the woman's involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any maternal death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of domestic abuse, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

**Source:** Laws 1993, LB 431, § 6; Laws 1996, LB 1044, § 649; Laws 2013, LB361, § 6.

**71-3410 Provision of information and records; subpoenas.**

(1) Upon request, the team shall be immediately provided:

(a) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(b) All information and records maintained by any agency of state, county, or local government, any other political subdivision, any school district, or any public or private educational institution, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, educational records, parole and probation information and records, and information and records of any social services agency that provided services to the child, the pregnant or postpartum woman, or the family of the child or woman.

(2) The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1)(a) and (b) of this section, except records and information on any child or maternal death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

**Source:** Laws 1993, LB 431, § 7; Laws 1996, LB 1044, § 650; Laws 1998, LB 1073, § 126; Laws 2007, LB296, § 564; Laws 2013, LB361, § 7.

**71-3411 Information and records; confidentiality; release; conditions; disclosure; limitations.**

(1)(a) All information and records acquired by the team in the exercise of its purposes and duties pursuant to the Child and Maternal Death Review Act shall be confidential and exempt from disclosure and may only be disclosed as



provided in this section and as provided in section 71-3407. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(b) De-identified information and records obtained by the team may be released to a researcher, upon proof of identity and qualifications of the researcher, if the researcher is employed by a research organization, university, institution, or government agency and is conducting scientific, medical, or public health research and if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for a written agreement with the Department of Health and Human Services providing protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(c) De-identified information and records obtained by the team may be released to the United States Public Health Service or its successor, a government health agency, or a local public health department as defined in section 71-1626 if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

**Source:** Laws 1993, LB 431, § 8; Laws 2013, LB361, § 8.

## ARTICLE 35

### RADIATION CONTROL AND RADIOACTIVE WASTE

#### Cross References

**Indoor Tanning Facility Act**, see section 71-3901.

**Low-Level Radioactive Waste Disposal Act**, see section 81-1578.

**Medical Radiography Practice Act**, see section 38-1901.

**Radon**, credentialing provisions, see sections 38-1,119 to 38-1,123.

## PUBLIC HEALTH AND WELFARE

**Radon Resistant New Construction Act**, see section 76-3501.

**Regional Radiation Health Center**, see section 85-805 et seq.

**State Board of Health**, duties, see section 71-2610.01.

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

### (a) RADIATION CONTROL ACT

#### Section

- 71-3501. Public policy.
- 71-3502. Purpose of act; programs provided.
- 71-3502.01. Radon mitigation program; authorized.
- 71-3503. Terms, defined.
- 71-3504. Radiation control activities; Department of Health and Human Services; powers and duties.
- 71-3505. Department; powers and duties.
- 71-3506. Repealed. Laws 2002, LB 93, § 27.
- 71-3507. Licenses or registration; rules and regulations; exemptions; reciprocity; department; right of entry; surveys and inspections.
- 71-3508. Radiation; possession or use; records; contents; user of sources of radiation; qualifications; exemptions.
- 71-3508.01. Radioactive materials license; terms and conditions; termination of license; transfer of land; effect; department; powers and duties.
- 71-3508.02. Acquisition of sites; use; management.
- 71-3508.03. Fees; costs; use; exemptions; failure to pay; effect.
- 71-3508.04. Licensee; surety; long-term site surveillance and care; funds; disposition; powers and duties.
- 71-3509. Sources of radiation; agreements with federal agency; Governor; license; expiration.
- 71-3510. Federal government; other states; agreements; control of sources of radiation; department; powers.
- 71-3511. Radiation; ordinance, resolution, or regulation; superseded; when.
- 71-3512. Transferred to section 38-1914.
- 71-3513. Rules and regulations; licensure; department; powers; duties; appeal.
- 71-3513.01. Repealed. Laws 2014, LB 659, § 1.
- 71-3514. Violation of act; remedies.
- 71-3514.01. Deliberate misconduct; intentional misinformation; prohibited.
- 71-3515. Radiation; acts; registration or license required.
- 71-3515.01. Transferred to section 38-1915.
- 71-3515.02. Transferred to section 38-1918.
- 71-3516. Emergency; impounding sources of radiation; department; powers.
- 71-3516.01. Impounded source of radiation; disposition; procedure; expenses.
- 71-3517. Violations; civil and criminal penalties; appeal.
- 71-3518. License or registration; common carrier exempt.
- 71-3518.01. Existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated.
- 71-3519. Act, how cited.
- 71-3520. Act, how construed.

### (b) CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

- 71-3521. Repealed. Laws 1999, LB 530, § 2.
- 71-3522. Compact; withdrawal.

### (c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

- 71-3523. Legislative intent.
- 71-3524. Terms, defined.
- 71-3525. Fees.
- 71-3526. Radiation Transportation Emergency Response Cash Fund; created; use; investment; changes in fees; when.
- 71-3527. Rules and regulations.
- 71-3528. Applicability of sections.

### (d) RADIOLOGICAL INSTRUMENTS

- 71-3529. Legislative intent.
- 71-3530. Terms, defined.

Section	
71-3531.	Fees; use.
71-3532.	Nebraska Emergency Management Agency Cash Fund; created; use; investment.
71-3533.	Delivery and receipt of radiological instruments.
71-3534.	Forfeiture of instrument; when; procedure.
71-3535.	Applicability of sections.
71-3536.	Rules and regulations.

(a) RADIATION CONTROL ACT

**71-3501 Public policy.**

It is the policy of the State of Nebraska in furtherance of its responsibility to protect occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for:

(a) Compatibility and equivalency with the standards and regulatory programs of the federal government;

(b) A single effective system of regulation within the state; and

(c) A system consonant insofar as possible with those of other states;

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the protection of occupational and public health and safety and the environment;

(3) To provide for the availability of capacity either within or outside the state for the management of low-level radioactive waste generated within the state, except for waste generated as a result of defense or federal research and development activities, and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis; and

(4) To maximize the protection practicable for the citizens of Nebraska from radon or its decay products by establishing requirements for (a) appropriate qualifications for persons providing measurement and mitigation services of radon or its decay products and (b) radon mitigation system installations.

**Source:** Laws 1963, c. 406, § 1, p. 1296; Laws 1975, LB 157, § 1; Laws 1984, LB 716, § 1; Laws 1987, LB 390, § 2; Laws 1993, LB 536, § 82; Laws 1995, LB 406, § 40; Laws 2007, LB463, § 1207.

**71-3502 Purpose of act; programs provided.**

It is the purpose of the Radiation Control Act to effectuate the policies set forth in section 71-3501 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of occupational and public health and safety and the environment;

(2) A program to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public.

**Source:** Laws 1963, c. 406, § 2, p. 1296; Laws 1975, LB 157, § 2; Laws 1984, LB 716, § 2; Laws 1987, LB 390, § 3; Laws 1995, LB 406, § 41; Laws 2007, LB463, § 1208.

**71-3502.01 Radon mitigation program; authorized.**

The department may establish an alternative maximum contaminant level for radon in drinking water by establishing a multimedia radon mitigation program as provided under federal law which may include public education, testing, training, technical assistance, remediation grants, and loan or incentive programs. The purpose of the radon mitigation program shall be to achieve health risk reduction benefits equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the state complied with the maximum contaminant level of three hundred picocuries per liter.

**Source:** Laws 2001, LB 668, § 1; Laws 2007, LB296, § 565.

**71-3503 Terms, defined.**

For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

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

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon mitigation specialist, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

(ii) Any material that (A) has been made radioactive by use of a particle accelerator and (B) is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of

radium-226 to the public health and safety or the common defense and security; and

(ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

- (a) Irradiated reactor fuel;
  - (b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and
  - (c) Solids into which such liquid wastes have been converted;
- (22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;
- (23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;
- (24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;
- (25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;
- (26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;
- (27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;
- (28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;
- (29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;
- (30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environmental Quality; and
- (31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or

policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

**Source:** Laws 1963, c. 406, § 3, p. 1297; Laws 1975, LB 157, § 3; Laws 1978, LB 814, § 3; Laws 1984, LB 716, § 3; Laws 1987, LB 390, § 4; Laws 1989, LB 342, § 32; Laws 1990, LB 1064, § 17; Laws 1993, LB 121, § 434; Laws 1993, LB 536, § 83; Laws 1995, LB 406, § 42; Laws 1996, LB 1044, § 651; Laws 1996, LB 1201, § 1; Laws 2002, LB 93, § 12; Laws 2002, LB 1021, § 71; Laws 2005, LB 301, § 42; Laws 2006, LB 994, § 103; Laws 2007, LB296 § 566; Laws 2007, LB463, § 1209; Laws 2008, LB928, § 23; Laws 2012, LB794, § 1.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

**71-3504 Radiation control activities; Department of Health and Human Services; powers and duties.**

(1) The Department of Health and Human Services shall coordinate radiation control activities and may designate an administrator of radiation control. The administrator shall:

(a) Advise the Governor and agencies of the state on matters relating to radiation; and

(b) Coordinate regulatory activities of the state relating to radiation, including cooperation with other states and the federal government.

(2) The administrator shall:

(a) Review before and after the holding of any public hearing required under the Administrative Procedure Act, prior to promulgation, the proposed rules and regulations of all agencies of the state relating to use and control of radiation to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state;

(b) When he or she determines that proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state, make an effort to resolve such inconsistencies. Upon notification that such inconsistencies have not been resolved, the Governor may, after consultation with the department, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state or the federal government and may issue an order to that effect, in which event the proposed rules and regulations or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations;

(c) Advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation; and

(d) Collect and disseminate information relating to the control of sources of radiation and maintain (i) a file of all registrants, license applications, issuances, denials, amendments, transfers, renewals, modifications, inspections, recommendations pertaining to radiation, suspensions, and revocations, (ii) a file of registrants possessing or using sources of radiation requiring registration



under the Radiation Control Act and any administrative or judicial action pertaining to such registration, and (iii) a file of all rules and regulations relating to the regulation of sources of radiation, pending or promulgated, and proceedings on such rules and regulations thereon.

(3) The several agencies of the state and political subdivisions shall keep the administrator fully and currently informed as to their activities relating to development of new uses and regulation of sources of radiation.

**Source:** Laws 1963, c. 406, § 4, p. 1298; Laws 1975, LB 157, § 4; Laws 1987, LB 390, § 5; Laws 1996, LB 1044, § 652; Laws 2002, LB 93, § 13; Laws 2007, LB296, § 567.

**Cross References**

**Administrative Procedure Act,** see section 84-920.

**71-3505 Department; powers and duties.**

(1) Matters relative to radiation as they relate to occupational and public health and safety and the environment shall be a responsibility of the department. The department shall:

(a) Develop comprehensive policies and programs for the evaluation and determination of undesirable radiation associated with the production, use, storage, or disposal of radiation sources and formulate, adopt, promulgate, and repeal rules and regulations which may provide (i) for registration or licensure under section 71-3507 or 71-3509, (ii) for registration or licensure of (A) any other source of radiation, (B) persons providing services for collection, detection, measurement, or monitoring of sources of radiation, including, but not limited to, radon and its decay products, (C) persons providing services to reduce the effects of sources of radiation, and (D) persons practicing industrial radiography, and (iii) for fingerprinting and a federal criminal background check on persons with unescorted access to radionuclides of concern, as specified by rule, regulation, or order so as to reasonably protect occupational and public health and safety and the environment in a manner compatible with regulatory programs of the federal government. The department for identical purposes may also adopt and promulgate rules and regulations for the issuance of licenses, either general or specific, to persons for the purpose of using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any radioactive material. Such rules and regulations may prohibit the use of radiation for uses found by the department to be detrimental to occupational and public health or safety or the environment and shall carry out the purposes and policies set out in sections 71-3501 and 71-3502. Such rules and regulations shall not prohibit or limit the kind or amount of radiation purposely prescribed for or administered to a patient by doctors of medicine and surgery, dentistry, osteopathic medicine, chiropractic, podiatry, and veterinary medicine, while engaged in the lawful practice of such profession, or administered by other professional personnel, such as allied health personnel, medical radiographers, limited radiographers, nurses, and laboratory workers, acting under the supervision of a licensed practitioner. Violation of rules and regulations adopted and promulgated by the department pursuant to the Radiation Control Act shall be due cause for the suspension, revocation, or limitation of a license issued by the department. Any licensee may request a hearing before the department on the issue of such suspension, revocation, or limitation. Procedures for notice and opportunity for a hearing before the

department shall be pursuant to the Administrative Procedure Act. The decision of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act;

(b) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(c) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation;

(d) Collect and disseminate health education information relating to radiation protection;

(e) Make its facilities available so that any person or any agency may request the department to review and comment on plans and specifications of installations submitted by the person or agency with respect to matters of protection and safety for the control of undesirable radiation;

(f) Be empowered to inspect radiation sources and their shieldings and surroundings for the determination of any possible undesirable radiation or violations of rules and regulations adopted and promulgated by the department and provide the owner, user, or operator with a report of any known or suspected deficiencies; and

(g) Collect a fee for emergency response or environmental surveillance, or both, offsite from each nuclear power plant equal to the cost of completing the emergency response or environmental surveillance and any associated report. In no event shall the fee for any nuclear power plant exceed the lesser of the actual costs of such activities or eighty-two thousand dollars per annum. Commencing January 1, 2018, the accounting division of the Department of Administrative Services shall recommend an inflationary adjustment equivalent which shall be based upon the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, and shall not exceed five percent per annum. Such adjustment shall be applied to the annual fee for nuclear power plants. The fee collected shall be credited to the Health and Human Services Cash Fund. This fee shall be used solely for the purpose of defraying the costs of the emergency response and environmental surveillance at Cooper Nuclear Station and Fort Calhoun Station conducted by the department. The department may charge additional fees when mutually agreed upon for services, training, or equipment that are a part of or in addition to matters in this section. This subdivision shall not apply to any nuclear power plant that (i) has initiated permanent plant decommissioning and has notified the department that it has implemented a permanent defueled emergency plan which no longer requires pre-planned assistance from state agencies pursuant to rules and regulations of the United States Nuclear Regulatory Commission and (ii) no longer requires protective actions beyond the site boundary to protect the public and the environment from exposure to radiation as a result of an event at such plant.

(2) If a nuclear power plant is no longer subject to the fee requirement pursuant to subdivision (1)(g) of this section, the fee for the remaining nuclear power plant shall not exceed the lesser of the actual costs of the department's activities or one hundred ten thousand dollars per annum. Such fee shall be subject to all other provisions of subdivision (1)(g) of this section.

**Source:** Laws 1963, c. 406, § 5, p. 1299; Laws 1969, c. 577, § 1, p. 2324; Laws 1975, LB 157, § 5; Laws 1978, LB 814, § 4; Laws 1987, LB

390, § 6; Laws 1988, LB 352, § 131; Laws 1989, LB 342, § 33; Laws 1990, LB 1064, § 18; Laws 1995, LB 406, § 43; Laws 1996, LB 1044, § 653; Laws 1997, LB 658, § 13; Laws 2000, LB 1115, § 72; Laws 2002, LB 93, § 14; Laws 2007, LB296, § 568; Laws 2007, LB463, § 1210; Laws 2008, LB928, § 24; Laws 2017, LB430, § 1.

## Cross References

Administrative Procedure Act, see section 84-920.

**71-3506 Repealed. Laws 2002, LB 93, § 27.****71-3507 Licenses or registration; rules and regulations; exemptions; reciprocity; department; right of entry; surveys and inspections.**

(1) The department shall adopt and promulgate rules and regulations for the issuance, amendment, suspension, and revocation of general and specific licenses. Such licenses shall be for byproduct material, source material, special nuclear material, and radioactive material not under the authority of the federal Nuclear Regulatory Commission and for devices or equipment utilizing such materials. The rules and regulations shall provide:

(a) For written applications for a specific license which include the technical, financial, and other qualifications determined by the department to be reasonable and necessary to protect occupational and public health and safety and the environment;

(b) For additional written statements and inspections, as required by the department, at any time after filing an application for a specific license and before the expiration of the license to determine whether the license should be issued, amended, suspended, or revoked;

(c) That all applications and statements be signed by the applicant or licensee;

(d) The form, terms, and conditions of general and specific licenses;

(e) That no license or right to possess or utilize sources of radiation granted by a license shall be assigned or in any manner disposed of without the written consent of the department; and

(f) That the terms and conditions of all licenses are subject to amendment by rules, regulations, or orders issued by the department.

(2) The department may require registration or licensing of radioactive material not enumerated in subsection (1) of this section in order to maintain compatibility and equivalency with the standards and regulatory programs of the federal government or to protect the occupational and public health and safety and the environment.

(3)(a) The department shall require licensure of persons providing measurement and mitigation services of radon or its decay products in order to protect the occupational and public health and safety and the environment.

(b) The department shall adopt and promulgate rules and regulations establishing education, experience, training, examination, and continuing competency requirements for radon measurement specialists and radon mitigation specialists. Application for such licenses shall be made as provided in the Uniform Credentialing Act. Such persons shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to disciplinary action pursuant to section 71-3517. Continuing competency re-

quirements may include, but not be limited to, one or more of the continuing competency activities listed in section 38-145. Any radon measurement technician license issued prior to December 1, 2008, shall remain valid as a radon measurement specialist license on and after such date until the date such radon measurement technician license would have expired. Such radon measurement specialist license shall be subject to rules and regulations adopted and promulgated by the department.

(c) The department shall adopt and promulgate rules and regulations establishing staffing, proficiency, quality control, reporting, worker health and safety, equipment, and record-keeping requirements for radon measurement businesses and radon mitigation businesses and mitigation system installation requirements for radon mitigation businesses.

(4) The department may exempt certain sources of radiation or kinds of uses or users from licensing or registration requirements established under the Radiation Control Act when the department finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(5) The department may provide by rule and regulation for the recognition of other state or federal licenses compatible and equivalent with the standards established by the department for Nebraska licensees.

(6) The department may accept accreditation for an industrial radiographer by a recognized independent accreditation body, a public agency, or the federal Nuclear Regulatory Commission, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the industrial radiographer complies with the rules and regulations adopted and promulgated pursuant to the act. The department may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that meet this standard.

(7) The department may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with the act and rules and regulations adopted and promulgated pursuant to the act, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

(8) The department shall cause to be registered with the department such sources of radiation as the department determines to be reasonably necessary to protect occupational and public health and safety and the environment as follows:

(a) The department shall, by public notice, establish a date on or before which date such sources of radiation shall be registered with the department. An application for registration shall be either in writing or by electronic means and shall state such information as the department by rules or regulations may determine to be necessary and reasonable to protect occupational and public health and safety and the environment;

(b) Registration of sources of radiation shall be an initial registration with appropriate notification to the department in the case of alteration of equipment, acquisition of new sources of radiation, or the transfer, loss, or destruction of sources of radiation and shall include the registration of persons installing or servicing sources of radiation;

(c) Failure to register or reregister sources of radiation in accordance with rules and regulations adopted and promulgated by the department shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars; and

(d) The department may provide by rule and regulation for reregistration of sources of radiation.

(9) The results of any surveys or inspections of sources of radiation conducted by the department shall be public records subject to sections 84-712 to 84-712.09. In addition, the following information shall be deemed confidential:

(a) The names of individuals in dosimetry reports;

(b) Emergency response procedures which would present a clear threat to security or disclose names of individuals; and

(c) Any other information that is likely to present a clear threat to the security of radioactive material. The department shall make such reports of results of surveys or inspections available to the owner or operator of the source of radiation together with any recommendations of the department regarding deficiencies noted.

(10) The department shall have the right to survey or inspect again any source of radiation previously surveyed without limitation of the number of surveys or inspections conducted on a given source of radiation.

(11) The department may enter into contracts with persons or corporations to perform the inspection of X-ray radiation-generating equipment or devices which emit radiation from radioactive materials and to aid the department in the administration of the act.

**Source:** Laws 1963, c. 406, § 7, p. 1301; Laws 1975, LB 157, § 7; Laws 1978, LB 814, § 5; Laws 1987, LB 390, § 7; Laws 1990, LB 1064, § 19; Laws 1993, LB 536, § 84; Laws 1995, LB 406, § 44; Laws 1999, LB 800, § 11; Laws 2000, LB 1115, § 73; Laws 2002, LB 1021, § 72; Laws 2007, LB463, § 1211; Laws 2008, LB928, § 26.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-3508 Radiation; possession or use; records; contents; user of sources of radiation; qualifications; exemptions.**

(1) The department shall require each person who possesses or uses a source of radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require subject to such exemptions as may be provided by rules or regulations. These records shall be made available for inspection by or copies shall be submitted to the department on request.

(2) The department shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request. Any person possessing or using a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of each employee's personal exposure record at any time such employee has received exposure in excess of the amount specified in the rules and regulations of the

department and upon termination of employment. A copy of the annual exposure record shall be furnished to the employee as required under rules and regulations adopted under the Radiation Control Act.

(3) The department may adopt and promulgate rules and regulations establishing qualifications pertaining to the education, knowledge of radiation safety procedures, training, experience, utilization, facilities, equipment, and radiation protection program that an individual user of sources of radiation shall possess prior to using any source of radiation or radiation-generating equipment. Individuals who are currently licensed in the State of Nebraska as podiatrists, chiropractors, dentists, physicians and surgeons, osteopathic physicians, physician assistants, and veterinarians shall be exempt from the rules and regulations of the department pertaining to the qualifications of persons for the use of X-ray radiation-generating equipment operated for diagnostic purposes.

**Source:** Laws 1963, c. 406, § 8, p. 1303; Laws 1975, LB 157, § 8; Laws 1978, LB 814, § 6; Laws 1980, LB 816, § 1; Laws 1987, LB 390, § 8; Laws 1989, LB 342, § 35; Laws 1995, LB 406, § 45; Laws 1996, LB 1108, § 21.

**71-3508.01 Radioactive materials license; terms and conditions; termination of license; transfer of land; effect; department; powers and duties.**

(1) Any radioactive materials license issued or renewed after August 30, 1987, for any activity which results in the production of byproduct material as defined in subdivision (12)(b) of section 71-3503 shall contain such terms and conditions as the department determines to be necessary to assure that prior to termination of such license:

(a) The licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the department which shall be equivalent, to the extent practicable, or more stringent than those of the federal Nuclear Regulatory Commission for sites (i) at which ores are processed primarily for their source material content and (ii) at which such byproduct material or mill tailings are deposited; and

(b) Ownership of any disposal site and such byproduct material or mill tailings which resulted from the licensed activity will, subject to subsection (2) of this section, be transferred to (i) the United States or (ii) this state if the state exercises the option to acquire land used for the disposal of such byproduct material or mill tailings. Any license which is in effect on August 30, 1987, and which is subsequently terminated without renewal shall comply with subdivisions (1)(a) and (b) of this section upon termination.

(2)(a) The department shall require by rule, regulation, or order that prior to the termination of any license which is issued after August 30, 1987, title to the land, including any interests therein, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, which is used pursuant to such license for the disposal of byproduct material or source material mill tailings will be transferred to (i) the United States or (ii) this state, unless the federal Nuclear Regulatory Commission determines prior to such termination that transfer of title to such land and such byproduct material or mill tailings is not necessary or desirable to protect the occupational and public health and safety and the environment or to minimize danger to life or property.

(b) If transfer to the state of title to such byproduct material or mill tailings and land is required, the state may assume title, following the federal Nuclear Regulatory Commission's determination that the licensee has complied with applicable standards and requirements under the license, and the department shall maintain the byproduct material or mill tailings and land in such manner as will protect the occupational and public health and safety and the environment.

(c) The department may undertake such monitoring, maintenance, and emergency measures as are necessary to protect the occupational and public health and safety and the environment for those materials and property to which the state has assumed title pursuant to this section.

(d) The transfer of title to the United States or this state shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(e) Title transferred pursuant to this section shall be transferred without cost to the United States or this state other than the administrative and legal costs incurred in carrying out such transfer.

(3) In the licensing and regulation of byproduct material and source material mill tailings or of any activity which results in the production of byproduct material or mill tailings, the department shall require compliance with applicable standards adopted and promulgated by the department which are equivalent, to the extent practicable, or more stringent than standards adopted and enforced by the federal Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the federal Environmental Protection Agency.

**Source:** Laws 1987, LB 390, § 9; Laws 2002, LB 93, § 15.

#### **71-3508.02 Acquisition of sites; use; management.**

(1) Lands and appurtenances which are used for the management of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of section 81-15,102. Such lands and appurtenances shall be used exclusively for the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the occupational and public health and safety or the environment. Before such site is leased for other use, the radioactive waste history of the site shall be recorded in the permanent land records of the site.

(2) The department may contract with third parties for management of a low-level radioactive waste site. A contractor shall be subject to the surety and long-term care funding provisions of section 71-3508.04 and to appropriate licensing by the federal Nuclear Regulatory Commission or by the department.

**Source:** Laws 1987, LB 390, § 10; Laws 1994, LB 72, § 1; Laws 1996, LB 1201, § 2.

#### **71-3508.03 Fees; costs; use; exemptions; failure to pay; effect.**

(1) The department shall establish by rule and regulation annual fees for the radioactive materials licenses, for inspections of radioactive materials, for the

registration and inspection of radiation-generating equipment and other sources of radiation, and for radon measurement and mitigation business licenses and inspections of radon mitigation systems installations under the Radiation Control Act. The annual fee for registration and inspection of X-ray radiation generating equipment used to diagnose conditions in humans or animals shall not exceed four hundred dollars per X-ray machine. The department shall also establish by rule and regulation additional fees for environmental surveillance activities performed by the department to assess the radiological impact of activities conducted by licensees and registrants. Such activities shall not duplicate surveillance programs approved by the federal Nuclear Regulatory Commission and conducted by entities licensed by such commission. No fee shall exceed the actual cost to the department for administering the act. The fees collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund and shall be used solely for the purpose of defraying the direct and indirect costs of administering the act. The department shall collect such fees.

(2) The department may, upon application by an interested person or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include, but shall not be limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(3) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

(4) The department shall establish and collect fees for licenses for individuals engaged in radon detection, measurement, and mitigation as provided in sections 38-151 to 38-157.

**Source:** Laws 1987, LB 390, § 11; Laws 1990, LB 1064, § 20; Laws 1993, LB 536, § 85; Laws 1996, LB 1044, § 654; Laws 2002, LB 1021, § 73; Laws 2003, LB 242, § 114; Laws 2007, LB296 § 569; Laws 2007, LB463, § 1212; Laws 2008, LB928, § 27.

**71-3508.04 Licensee; surety; long-term site surveillance and care; funds; disposition; powers and duties.**

(1) For licensed activities involving source material milling, source material mill tailings, and management of low-level radioactive waste, the department shall, and for other classes of licensed activities the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the licensure, regulation, decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity in case the licensee should default for any reason in performing such requirements. All sureties required which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money in such fund remitted pursuant to this subsection shall be expended by the department as necessary to complete the closure and reclamation requirements and shall not be used for normal operating expenses of the department.



(2) For licensed activities involving the disposal of source material mill tailings and management of low-level radioactive waste, the department shall, and for other classes of licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care. All such funds collected from licensees shall be paid to the department and remitted to the State Treasurer for credit to the fund. All funds accrued as interest on money credited to the fund pursuant to this subsection may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the occupational and public health and safety and the environment. If title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(3) The sureties or other financial arrangements and funds required by this section shall be established in amounts sufficient to ensure compliance with standards, if any, established by the department pertaining to licensure, regulation, closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(4) To provide for the proper care and surveillance of sites subject to subsection (2) of this section which are not subject to section 71-3508.01 or 71-3508.02, the state may acquire by gift or transfer from another governmental agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer shall be subject to approval and acceptance by the Legislature.

(5) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(6) If a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump-sum deposit shall be made to the department and remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The amount of such deposit shall be determined by the department taking into account the factors stated in subsections (1) and (2) of this section.

**Source:** Laws 1987, LB 390, § 12; Laws 1991, LB 703, § 37; Laws 1996, LB 1044, § 655; Laws 2007, LB296, § 570.

**71-3509 Sources of radiation; agreements with federal agency; Governor; license; expiration.**

(1) The Governor, on behalf of this state, may enter into agreements with the federal Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274b, as amended, providing for discontinuance of certain of such commission's licensing and related regulatory authority with respect to

byproduct material, source material, and special nuclear material and the assumption of regulatory authority for such materials by this state.

(2) The department may, upon discontinuance of certain of such commission's licensing and related regulatory authority with respect to byproduct material, source material, and special nuclear material and the assumption of regulatory authority for such materials by the state, cause to be licensed by the department such materials over which the state has assumed licensing and related regulatory authority under the terms of the agreement authorized in subsection (1) of this section.

(3) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal Nuclear Regulatory Commission for radioactive material subject to the agreement shall be deemed to possess a license like those issued under the Radiation Control Act. Such license shall expire either ninety days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the federal Nuclear Regulatory Commission license, whichever is the earlier.

**Source:** Laws 1963, c. 406, § 9, p. 1303; Laws 1975, LB 157, § 9; Laws 1987, LB 390, § 13.

**71-3510 Federal government; other states; agreements; control of sources of radiation; department; powers.**

(1) The department may enter into an agreement or agreements with the federal Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274i, as amended, other federal governmental agencies as authorized by law, other states, or interstate agencies whereby this state will perform on a cooperative basis with the federal Nuclear Regulatory Commission, other federal governmental agencies, other states, or interstate agencies inspections or other functions relating to control of sources of radiation.

(2) The department may institute training programs for the purpose of qualifying personnel to carry out the Radiation Control Act and may make such personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of such act.

**Source:** Laws 1963, c. 406, § 10, p. 1304; Laws 1975, LB 157, § 10; Laws 1987, LB 390, § 14.

**71-3511 Radiation; ordinance, resolution, or regulation; superseded; when.**

Any ordinance, resolution, or regulation, now or hereafter in effect, of the governing body of a municipality, county, or state agency relating to sources of radiation that is inconsistent with the Radiation Control Act, amendments thereto, or rules and regulations adopted and promulgated pursuant to the act is superseded by the act.

**Source:** Laws 1963, c. 406, § 11, p. 1304; Laws 1975, LB 157, § 11; Laws 1984, LB 716, § 4; Laws 1987, LB 390, § 15.

**71-3512 Transferred to section 38-1914.**

**71-3513 Rules and regulations; licensure; department; powers; duties; appeal.**

(1) In any proceeding for the issuance or modification of rules or regulations relating to control of sources of radiation, the department shall provide an opportunity for public participation through written comments and a public hearing.

(2) In any proceeding for the denial of an application for a license or for the amendment, suspension, or revocation of a license, the department shall provide the applicant or licensee an opportunity for a hearing on the record.

(3) In any proceeding for licensing ores processed primarily for their source material content and management of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall provide:

(a) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(b) An opportunity for cross-examination; and

(c) A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period.

(4) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall prepare, for each licensed activity which has a significant impact on the occupational or public health and safety or the environment, a written analysis of the impact of such licensed activity. The analysis shall be available to the public before the commencement of the hearing and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterway and ground water;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and

(d) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination, and reclamation.

(5) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by this section prior to completion of such analysis.

(6) Whenever the department finds that an emergency exists with respect to radiation requiring immediate action to protect occupational or public health and safety or the environment, the department may, without notice, hearing, or submission to the administrator, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of the Radiation Control Act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply immediately, but on application to the department shall be afforded a hearing not less than fifteen days and not more than thirty days after filing of the application. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty days after such hearing, and the

department shall mail the applicant a copy of its findings of fact and determination.

(7) Any final department action or order entered pursuant to subsection (1), (2), (3), or (6) of this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1963, c. 406, § 13, p. 1305; Laws 1975, LB 157, § 12; Laws 1987, LB 390, § 16; Laws 1988, LB 352, § 132; Laws 2007, LB296, § 571.

Cross References

Administrative Procedure Act, see section 84-920.

**71-3513.01 Repealed. Laws 2014, LB 659, § 1.**

**71-3514 Violation of act; remedies.**

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to the act, the Attorney General or any county attorney may make application to the district court for an order enjoining such acts or practices or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**Source:** Laws 1963, c. 406, § 14, p. 1305; Laws 1987, LB 390, § 17.

**71-3514.01 Deliberate misconduct; intentional misinformation; prohibited.**

(1) Any licensee, registrant, applicant for a license or registration, employee of a licensee or registrant, contractor or subcontractor of a licensee, registrant, or applicant for a license or registration, or employee of any contractor or subcontractor of a licensee, registrant, or applicant for a license or registration, who knowingly provides to any licensee, registrant, applicant, contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's, or applicant's activities covered by the Radiation Control Act, shall not (a) engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, registrant, or applicant to be in violation of any rule, regulation, or order or any term, condition, or limitation of any license or registration issued by the department or (b) intentionally submit to the department, a licensee, a registrant, an applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the department.

(2) Any person who violates this section is subject to section 71-3517.

**Source:** Laws 2002, LB 1021, § 74.

**71-3515 Radiation; acts; registration or license required.**

It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless registered with or licensed by the department as

required by the Medical Radiography Practice Act or section 71-3505, 71-3507, or 71-3509.

**Source:** Laws 1963, c. 406, § 15, p. 1306; Laws 1975, LB 157, § 13; Laws 1978, LB 814, § 7; Laws 1984, LB 716, § 5; Laws 1987, LB 390, § 18; Laws 2007, LB463, § 1213.

**Cross References**

Medical Radiography Practice Act, see section 38-1901.

**71-3515.01 Transferred to section 38-1915.**

**71-3515.02 Transferred to section 38-1918.**

**71-3516 Emergency; impounding sources of radiation; department; powers.**

(1) The department shall have the authority in the event of an emergency affecting occupational or public health and safety or the environment to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of the Radiation Control Act or any rules or regulations issued pursuant to such act.

(2) Any source of radiation impounded by the department is declared to be a common nuisance and cannot be subject to a replevin action.

(3) Possession of an impounded source of radiation shall be determined by section 71-3516.01.

**Source:** Laws 1963, c. 406, § 16, p. 1306; Laws 1975, LB 157, § 14; Laws 1987, LB 390, § 19; Laws 2006, LB 994, § 106.

**71-3516.01 Impounded source of radiation; disposition; procedure; expenses.**

(1) The department shall keep any source of radiation impounded under section 71-3516 for as long as it is needed as evidence for any hearing.

(2) Prior to the issuance of an order of disposition for an impounded source of radiation, the department shall notify in writing any person, known by the department to claim an interest in the source of radiation, that the department intends to dispose of the source of radiation. Notice shall be served by personal service, by certified or registered mail to the last-known address of the person, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated.

(3) Within fifteen days after service of the notice under subsection (2) of this section, any person claiming an interest in the impounded source of radiation may request, in writing, a hearing before the department to determine possession of the source of radiation. The hearing shall be held in accordance with rules and regulations adopted and promulgated by the department. If the department determines that the person claiming an interest in the source of radiation has proven by a preponderance of the evidence that such person (a) had not used or intended to use the source of radiation in violation of the Radiation Control Act, (b) has an interest in the source of radiation acquired in good faith as an owner, a lien holder, or otherwise, and (c) has the authority under the act to possess such source of radiation, the department shall order that possession of the source of radiation be given to such person. If possession of the impounded source of radiation is not given to the person requesting the hearing, such person may appeal the decision of the department, and the

appeal shall be in accordance with the Administrative Procedure Act. If possession of the impounded source of radiation is not given to the person so appealing, the department shall order such person to pay for the costs of the hearing, storage fees, and any other reasonable and necessary expenses related to the impounded source of radiation.

(4) If possession of the impounded source of radiation is not given to the person requesting the hearing under subsection (3) of this section, the department shall issue an order of disposition for the source of radiation and shall dispose of the source of radiation as directed in the order. Disposition methods are at the discretion of the department and may include, but are not limited to, (a) sale of the source of radiation to a person authorized to possess the source of radiation under the act, (b) transfer to the manufacturer of the source of radiation, or (c) destruction of the source of radiation. The order of disposition shall be considered a transfer of title of the source of radiation.

(5) If expenses related to the impounded source of radiation are not paid under subsection (3) of this section, the department shall pay such expenses from:

- (a) Proceeds from the sale of the source of radiation, if sold; or
- (b) Available funds in the Health and Human Services Cash Fund.

**Source:** Laws 2006, LB 994, § 107; Laws 2007, LB296, § 572.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-3517 Violations; civil and criminal penalties; appeal.**

(1) Any person who violates any of the provisions of the Radiation Control Act shall be guilty of a Class IV misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, any person who violates any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to such act or any term, condition, or limitation of any license or registration certificate issued pursuant to such act shall be subject to:

- (a) License revocation, suspension, modification, condition, or limitation;
- (b) The imposition of a civil penalty; or
- (c) The terms of any appropriate order issued by the department.

(3) Whenever the department proposes to subject a person to the provisions of subsection (2) of this section, the department shall notify the person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, license, or registration certificate involved in the violation, and (c) of the sanction or order to be imposed. If a civil penalty is imposed, the notice shall include a statement that it can be collected by civil action. The notice shall be delivered to each alleged violator by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. The sanction or order in the notice shall become final thirty days after the mailing of the notice unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department. If the notice is served by personal

service or publication, the sanction or order shall become final thirty days after completion of such service unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department.

(4) Hearings held pursuant to subsection (3) of this section shall be held in accordance with rules and regulations adopted and promulgated by the department and shall provide for the alleged violator to present such evidence as may be proper. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations of the department. A full and complete record shall be kept of the proceedings.

(5) Following the hearing, the department shall determine whether the charges are true or not, and if true, the department may (a) issue a declaratory order finding the charges to be true, (b) revoke, suspend, modify, condition, or limit the license, (c) impose a civil penalty in an amount not to exceed ten thousand dollars for each violation, or (d) enter an appropriate order. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty and the amount of the penalty shall be based on the severity of the violation. A copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either certified or registered mail to the alleged violator. The decision may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any civil penalty assessed and unpaid under subsection (5) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(7) In addition to the provisions of this section, radon measurement specialists and radon mitigation specialists shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued to a specialist may be disciplined for any violation of the Radiation Control Act or the rules and regulations adopted and promulgated under the act.

**Source:** Laws 1963, c. 406, § 17, p. 1306; Laws 1977, LB 39, § 172; Laws 1987, LB 390, § 20; Laws 1988, LB 352, § 133; Laws 2002, LB 1021, § 77; Laws 2007, LB296, § 573; Laws 2007, LB463, § 1214; Laws 2008, LB928, § 28.

#### Cross References

**Administrative Procedure Act**, see section 84-920.

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

### **71-3518 License or registration; common carrier exempt.**

Nothing in the Radiation Control Act shall be deemed to require the licensing or registration by any common carrier, contract carrier, private carrier, railway freight carrier, or railway express carrier transporting, storing, or handling any

of the materials described in such act in the ordinary course of such carrier's business.

**Source:** Laws 1963, c. 406, § 18, p. 1306; Laws 1987, LB 390, § 21.

**71-3518.01 Existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated.**

(1) All rules and regulations adopted prior to December 1, 2008, under the Radiation Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses or other forms of approval issued prior to December 1, 2008, in accordance with the Radiation Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Radiation Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

**Source:** Laws 2007, LB463, § 1215.

**71-3519 Act, how cited.**

Sections 71-3501 to 71-3520 shall be known and may be cited as the Radiation Control Act.

**Source:** Laws 1963, c. 406, § 20, p. 1306; Laws 1987, LB 390, § 22; Laws 2001, LB 668, § 2; Laws 2002, LB 1021, § 78; Laws 2005, LB 453, § 1; Laws 2006, LB 994, § 108; Laws 2007, LB463, § 1216; Laws 2008, LB928, § 29.

**71-3520 Act, how construed.**

Nothing in the Radiation Control Act shall be construed to allow the department to duplicate regulation by the federal government.

**Source:** Laws 1987, LB 390, § 25.

(b) CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

**71-3521 Repealed. Laws 1999, LB 530, § 2.**

**71-3522 Compact; withdrawal.**

The State of Nebraska hereby withdraws from the Central Interstate Low-Level Radioactive Waste Compact. The Governor shall notify in writing each of the governors of the other compact states and the chairperson of the Central Interstate Low-Level Radioactive Waste Compact Commission that the withdrawal of the State of Nebraska from the compact is effective.

**Source:** Laws 1999, LB 530, § 1.

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

**71-3523 Legislative intent.**

It is the intent of the Legislature that costs incurred by the State of Nebraska attributable to the shipment of high-level radioactive waste and transuranic waste in or through the state shall be borne by the shipper.

**Source:** Laws 2003, LB 165, § 1.



**71-3524 Terms, defined.**

For purposes of sections 71-3523 to 71-3528:

- (1) Department means the Department of Health and Human Services;
- (2) High-level radioactive waste has the definition found in section 81-1589; and
- (3) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram.

**Source:** Laws 2003, LB 165, § 2; Laws 2005, LB 301, § 43; Laws 2007, LB296, § 574.

**71-3525 Fees.**

Until January 1, 2005, a fee of two thousand dollars shall be assessed on each cask of high-level radioactive waste or transuranic waste shipped in or through the state, whether shipped by motor carrier or rail. On and after January 1, 2005, the department shall establish and assess fees on all high-level radioactive waste and transuranic waste shipped by any means in or through the state. Such fees shall be equitable and shall be used for purposes related to (1) shipping of high-level radioactive waste and transuranic waste, including, but not limited to, inspections, escorts, and security for waste shipment, planning, and maintenance, (2) coordination of emergency response capability, (3) education and training, (4) purchase of necessary equipment, and (5) administrative costs attributable to the state agencies which are incurred as related to the shipping of high-level radioactive waste and transuranic waste. Fees assessed pursuant to this section shall be paid in advance of shipment by the shipper. Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Radiation Transportation Emergency Response Cash Fund.

**Source:** Laws 2003, LB 165, § 3.

**71-3526 Radiation Transportation Emergency Response Cash Fund; created; use; investment; changes in fees; when.**

The Radiation Transportation Emergency Response Cash Fund is created. The fund shall consist of fees credited pursuant to section 71-3525. The fund shall be used for the purposes stated in such section. The Director-State Engineer, the Superintendent of Law Enforcement and Public Safety, the chief executive officer of the department, the Adjutant General as director of the Nebraska Emergency Management Agency, and the executive director of the Public Service Commission, or their designees, shall meet at least annually to recommend changes in the fees charged and allocation of the fees collected among participating agencies based upon their respective costs in carrying out such section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2003, LB 165, § 4; Laws 2007, LB296, § 575.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-3527 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out sections 71-3523 to 71-3526.

**Source:** Laws 2003, LB 165, § 5.

**71-3528 Applicability of sections.**

Sections 71-3523 to 71-3527 do not apply to high-level radioactive waste or transuranic waste shipped by or for the United States Government for military, national security, or national defense purposes. Sections 71-3523 to 71-3527 do not require disclosure of defense information or restricted data as defined in the federal Atomic Energy Act of 1954.

**Source:** Laws 2003, LB 165, § 6.

## (d) RADIOLOGICAL INSTRUMENTS

**71-3529 Legislative intent.**

It is the intent of the Legislature that costs incurred by the State of Nebraska attributable to the calibration of radiological instruments be borne by the responsible agency and to provide state and local governmental agencies a cost-effective source for the calibration of radiological instruments without infringing on commercial resources within the State of Nebraska.

**Source:** Laws 2006, LB 787, § 1.

**71-3530 Terms, defined.**

For purposes of sections 71-3529 to 71-3536:

(1) Department means the Radiological Emergency Preparedness Division within the Nebraska Emergency Management Agency under the Military Department;

(2) Radiological instrument includes, but is not limited to, radiological meters, radiological detectors and probes, radiological dosimeters, and radiological kits; and

(3) Responsible agency means any state or local governmental entity or private agency which owns radiological instruments or has agreed to be responsible for the replacement, repair, or calibration of such instruments.

**Source:** Laws 2006, LB 787, § 2.

**71-3531 Fees; use.**

(1) Until January 1, 2008, a fee shall be assessed on each radiological instrument calibrated by the department as follows: Direct reading dosimeters, twenty-two dollars; electronic dosimeters, thirty-one dollars; CD V-700 meters, thirty-six dollars; CD V-715 meters, twenty-five dollars; CD V-718 meters, thirty-nine dollars; thermo-electron FH-40 GL and ASP-2 meters, sixty-six dollars; all electron detectors, forty-six dollars; and all other meters, sixty-six dollars. If any of such instruments form a kit, the fees shall be: CD V-777 kits, one hundred forty-nine dollars; thermo-electron FH-40 GL kits, two hundred thirty dollars; and thermo-electron ASP-2 kits, two hundred twenty-four dollars. Fees for minor repairs shall be at a base rate of sixteen dollars per hour plus the cost of parts. Beginning January 1, 2008, the department shall periodically

adopt and promulgate rules and regulations that establish or adjust replacement, repair, or calibration fees and the department shall assess such fees on all radiological instruments replaced, repaired, or calibrated by the department. The fees shall be equitable and the Adjutant General and the assistant director of the Nebraska Emergency Management Agency or their designees shall meet at least annually to recommend changes in the fees charged and allocation of fees collected for expenses incurred under this section.

(2) Such fees shall be used for purposes related to (a) inspection, repair, and calibration of radiological instruments, (b) repair, replacement, upgrade, and calibration of radiological calibrators, (c) security of calibration sources, (d) training of calibration technician personnel, (e) purchase of necessary tools and equipment related to radiological calibration, (f) payment of radiological licensing fees, and (g) if funds are available, administrative costs of the department and subsidizing the salary of calibration technician personnel and part-time employees.

(3) Fees for calibration shall be paid in advance. Other fees shall be paid when receipted from the department by the responsible agency. Fees shall be remitted to the State Treasurer for credit to the Nebraska Emergency Management Agency Cash Fund.

**Source:** Laws 2006, LB 787, § 3; Laws 2009, LB24, § 1.

**71-3532 Nebraska Emergency Management Agency Cash Fund; created; use; investment.**

The Nebraska Emergency Management Agency Cash Fund is created. The fund shall be administered by the director of the Nebraska Emergency Management Agency. The fund shall consist of all non-federal-fund revenue received by the Nebraska Emergency Management Agency. The fund shall only be used to pay for eligible costs of the Nebraska Emergency Management Agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2006, LB 787, § 4; Laws 2007, LB322, § 18.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-3533 Delivery and receipt of radiological instruments.**

The responsible agency shall be responsible for delivery and receipt of radiological instruments to and from the department.

**Source:** Laws 2006, LB 787, § 5.

**71-3534 Forfeiture of instrument; when; procedure.**

If a replaced, repaired, or calibrated radiological instrument has not been receipted from the department by the responsible agency sixty days after the completed replacement, repair, or calibration date, the department shall provide written notification to the responsible agency that failure to receipt such instrument within ninety days after the completion date shall result in forfeiture of such instrument. Written notification to the responsible agency shall be made a total of three times with not less than five working days between notifications.

If, after proper notification and ninety days after the completion date, such instrument has not been receipted from the department by the responsible agency, the instrument shall become the property of the State of Nebraska and shall be available for issue by the department to other responsible agencies who agree to be responsible for the replacement, repair, and calibration of the radiological instrument or the instrument shall be turned in as surplus property.

**Source:** Laws 2006, LB 787, § 6; Laws 2009, LB24, § 2.

#### **71-3535 Applicability of sections.**

Sections 71-3529 to 71-3536 shall not apply to a radiological instrument owned and replaced, repaired, or calibrated by the department, except when a responsible agency has been issued a radiological instrument and, by agreement, has consented to be responsible for the replacement, repair, and calibration of such instrument.

**Source:** Laws 2006, LB 787, § 7; Laws 2009, LB24, § 3.

#### **71-3536 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out sections 71-3529 to 71-3536.

**Source:** Laws 2006, LB 787, § 8.

### **ARTICLE 36**

#### **TUBERCULOSIS DETECTION AND PREVENTION ACT**

Section	
71-3601.	Terms, defined.
71-3601.01.	Act, how cited.
71-3602.	Communicable tuberculosis; orders authorized; refusal; state health officer or local health officer; powers and duties.
71-3603.	Petition; hearing; notice; costs.
71-3604.	Hearing; procedure; order.
71-3605.	Appeal; procedure.
71-3606.	Commitment; length of time.
71-3607.	Commitment; release; procedure.
71-3608.	Commitment; voluntary hospitalization.
71-3609.	Commitment; medical or surgical treatment; consent required.
71-3610.	Commitment; treatment; expenses; payment by state.
71-3611.	Commitment; consent to leave hospital; violation; return; costs paid by county.
71-3612.	Communicable tuberculosis; examination required; expense; payment.
71-3613.	Department; powers and duties.
71-3614.	Cost of drugs and patient care; transportation; payment.

#### **71-3601 Terms, defined.**

For purposes of the Tuberculosis Detection and Prevention Act:

(1) Communicable tuberculosis means tuberculosis manifested by a laboratory report of sputum or other body fluid or excretion found to contain tubercle bacilli or by chest X-ray findings interpreted as active tuberculosis by competent medical authority;

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

(3) Directed health measure means any measure, whether prophylactic or remedial, intended and directed to prevent, treat, or limit the spread of tuberculosis;

(4) Facility means a structure in which suitable isolation for tuberculosis can be given and which is approved by the department for the detention of recalcitrant tuberculous persons;

(5) Local health officer means (a) the health director of a local public health department as defined in section 71-1626 or (b) the medical advisor to the board of health of a county, city, or village;

(6) Recalcitrant tuberculous person means a person affected with tuberculosis in an active stage who by his or her conduct or mode of living endangers the health and well-being of other persons, by exposing them to tuberculosis, and who refuses to accept adequate treatment; and

(7) State health officer means the chief medical officer as described in section 81-3115.

**Source:** Laws 1963, c. 399, § 1, p. 1273; Laws 1982, LB 566, § 6; Laws 1996, LB 1044, § 657; Laws 2004, LB 1005, § 88; Laws 2007, LB296, § 576; Laws 2009, LB195, § 79.

**71-3601.01 Act, how cited.**

Sections 71-3601 to 71-3614 shall be known and may be cited as the Tuberculosis Detection and Prevention Act.

**Source:** Laws 2004, LB 1005, § 87.

**71-3602 Communicable tuberculosis; orders authorized; refusal; state health officer or local health officer; powers and duties.**

(1) When there are reasonable grounds to believe that a person has communicable tuberculosis and the person refuses to submit to the examination necessary to determine the existence of communicable tuberculosis, the state health officer or local health officer may order such person to submit to such examination. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

(2) When a person with communicable tuberculosis conducts himself or herself in such a way as to expose another person to the danger of infection, the state health officer or local health officer may order such person to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

**Source:** Laws 1963, c. 399, § 2, p. 1274; Laws 1992, LB 860, § 6; Laws 1996, LB 1044, § 658; Laws 2004, LB 1005, § 89; Laws 2009, LB195, § 80.

**71-3603 Petition; hearing; notice; costs.**

The county attorney of the county in which the proceedings are to be held as provided in section 71-3602 shall act for the department or local board of health. Either the state health officer or local health officer shall advise the county attorney in writing of the violation. Within three days of such notification, the county attorney shall file a petition with the county court.

Upon filing of the petition, the court shall set the matter for a hearing, which time shall be not less than five days nor more than ten days subsequent to filing. A copy of the petition together with a summons stating the time and place of hearing shall be served upon the person three days or more prior to the time set for the hearing.

Summons shall be served by the sheriff of the county in which the hearing is to be held, and return thereof shall be made as in other civil cases.

The court costs incurred in proceedings under the Tuberculosis Detection and Prevention Act, including medical examinations required by order of the court but excluding examinations procured by the person named in the petition, shall be borne by the county in which the proceedings are held.

**Source:** Laws 1963, c. 399, § 3, p. 1274; Laws 1996, LB 1044, § 659; Laws 2004, LB 1005, § 90.

**71-3604 Hearing; procedure; order.**

(1) Upon the hearing set in the order, the person named in the order shall have a right to be represented by counsel, to confront and cross-examine witnesses against him or her, and to have compulsory process for the securing of witnesses and evidence in his or her own behalf.

(2) Upon a consideration of the petition and evidence:

(a) If the court finds that there are reasonable grounds to believe that the person named in the petition has communicable tuberculosis and has refused to submit to an examination to determine the existence of communicable tuberculosis, the court shall order such person to submit to such examination. If after such examination is completed it is determined that the person has communicable tuberculosis, the court shall order directed health measures necessary for the treatment of the person and to prevent the transmission of the disease; or

(b) If the court finds that the person named in the petition has communicable tuberculosis and conducts himself or herself in such a way as to be a danger to the public health, an order shall be issued committing the person named to a facility and directing the sheriff to take him or her into custody and deliver him or her to the facility or to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease.

(3) If the court does not so find, the petition shall be dismissed. The cost of transporting such person to the facility shall be paid from county general funds.

**Source:** Laws 1963, c. 399, § 4, p. 1275; Laws 2009, LB195, § 81.

**71-3605 Appeal; procedure.**

Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review under the provisions of sections 25-2728 to 25-2738.

**Source:** Laws 1963, c. 399, § 5, p. 1275; Laws 1981, LB 42, § 25.

**71-3606 Commitment; length of time.**

Upon commitment, the person shall be confined until such time as the responsible attending physician determines that the patient no longer has communicable tuberculosis or that his discharge will not endanger public health.

**Source:** Laws 1963, c. 399, § 6, p. 1276.

**71-3607 Commitment; release; procedure.**

Any time beyond sixty days after commitment, the person or any friend or relative believing that the patient no longer has communicable tuberculosis or that his discharge will not endanger public health may institute proceedings by petition in the county court of the county wherein the confinement exists, whereupon the court shall set the matter down for a hearing before him within fifteen days, requiring the physician in attendance to show cause on a day certain why the patient should not be released. The court shall also require that the patient be allowed the right to be examined prior to the hearing by a physician of his own choice, if so desired and at his own expense. Thereafter all proceedings shall be conducted the same as on proceedings for commitment with the right of appeal by either party; *Provided*, such petition for discharge shall not be brought or renewed more often than once every ninety days.

**Source:** Laws 1963, c. 399, § 7, p. 1276.

**71-3608 Commitment; voluntary hospitalization.**

No person having communicable tuberculosis who in his or her home or elsewhere obeys the rules, regulations, and orders of the department for the control of tuberculosis or who voluntarily accepts hospitalization or treatment in a health care facility which is licensed and approved for such use under the Health Care Facility Licensure Act by the department and obeys the rules, regulations, and orders of the department for the control of communicable tuberculosis shall be committed under the Tuberculosis Detection and Prevention Act.

**Source:** Laws 1963, c. 399, § 8, p. 1276; Laws 1972, LB 1492, § 1; Laws 1996, LB 1044, § 660; Laws 2000, LB 819, § 108; Laws 2004, LB 1005, § 91.

**Cross References**

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

**71-3609 Commitment; medical or surgical treatment; consent required.**

No person committed under the Tuberculosis Detection and Prevention Act shall be required to submit to medical or surgical treatment without his or her consent or, if incompetent, without the consent of his or her legal guardian, or, if a minor, without the consent of a parent or next of kin.

**Source:** Laws 1963, c. 399, § 9, p. 1276; Laws 2004, LB 1005, § 92.

**71-3610 Commitment; treatment; expenses; payment by state.**

The expenses incurred in the care, maintenance, and treatment of patients committed under the Tuberculosis Detection and Prevention Act shall be paid from state funds appropriated to the department for the purpose of entering

into agreements with qualified health care facilities so as to provide for the care, maintenance, and treatment of such patients and those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment.

**Source:** Laws 1963, c. 399, § 10, p. 1277; Laws 1972, LB 1492, § 2; Laws 1996, LB 1044, § 661; Laws 2004, LB 1005, § 93; Laws 2007, LB296, § 577.

**71-3611 Commitment; consent to leave hospital; violation; return; costs paid by county.**

Any person committed under the Tuberculosis Detection and Prevention Act who leaves the facility without having been discharged by the attending physician or by court order shall be taken into custody and returned to the facility by the sheriff of any county where such person is found, upon an affidavit being filed with the sheriff by the administrator of the facility or duly authorized officer in charge thereof acting as the duly appointed agent and representative of the department in the matter. The costs of such transportation shall be paid from county general funds of the patient's county of residence. If the person is a nonresident of Nebraska or has no permanent residence, the costs shall be paid from county general funds of the county of commitment.

**Source:** Laws 1963, c. 399, § 11, p. 1277; Laws 1972, LB 1492, § 4; Laws 1996, LB 1044, § 662; Laws 2004, LB 1005, § 94.

**71-3612 Communicable tuberculosis; examination required; expense; payment.**

The state health officer and each local health officer shall use all available means to detect persons with communicable tuberculosis in his or her jurisdiction. If he or she has reasonable grounds based upon medical science for believing that a person has communicable tuberculosis and if this person refuses to submit to the examination necessary for determining the existence of communicable tuberculosis, the state health officer or local health officer shall issue an order to the person to obtain the appropriate examination. Thereafter, if the person does not comply within seven days, the state health officer or local health officer may institute commitment procedures as described in sections 71-3601 to 71-3604, the purpose of commitment under this section being to determine whether or not the person has communicable tuberculosis.

The costs of voluntary examination made upon request of the state health officer or local health officer and the cost of examination made upon order of the state health officer or local health officer shall be paid from county general funds of the person's county of residence. If the person is a nonresident or has no permanent residence, the costs shall be paid from the county general funds of the county of commitment. The costs of examination and maintenance while under commitment shall be paid from state funds appropriated to the department therefor. The costs of transportation under the commitment procedure for examination shall be paid from county general funds of the county of residence. If the person is not a resident of Nebraska or has no permanent residence, they shall be paid from the county general funds of the county of commitment.

**Source:** Laws 1963, c. 399, § 12, p. 1277; Laws 1972, LB 1492, § 5; Laws 1996, LB 1044, § 663; Laws 2004, LB 1005, § 95.



**71-3613 Department; powers and duties.**

The department shall have and may exercise the following powers and duties in its administration of the Tuberculosis Detection and Prevention Act:

(1) To contract with qualified hospitals or other health care facilities which are licensed and approved for such use under the Health Care Facility Licensure Act by the department for the purpose of caring for, maintaining, and treating patients committed under the Tuberculosis Detection and Prevention Act, and for those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment in such a health care facility on either an inpatient or an outpatient basis;

(2) To inspect and supervise to the extent necessary the facilities, operations, and administration of those health care facilities under contract to or otherwise receiving support from the department for the purpose of providing care, treatment, or maintenance for persons infected with communicable tuberculosis;

(3) To provide visiting nursing services to those persons having communicable tuberculosis who are being treated on an outpatient basis;

(4) To adopt rules and regulations, and issue orders based thereon, relative to reports and statistics on tuberculosis from counties and the care, treatment, and maintenance of persons having tuberculosis, especially of those in the communicable or contagious stage thereof; and

(5) To set standards by rule and regulation for the types and level of medical care and treatment to be used by those health care facilities caring for tuberculous persons and to set standards by rule and regulation governing contracts mentioned in subdivision (1) of this section dealing with such matters as program standards, maximum and minimum costs and rates, administrative procedures to be followed and reports to be made, and arbitration by third parties.

Rules, regulations, and orders in effect under this section prior to July 16, 2004, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 1972, LB 1492, § 3; Laws 1996, LB 1044, § 664; Laws 2000, LB 819, § 109; Laws 2004, LB 1005, § 96.

**Cross References**

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

**71-3614 Cost of drugs and patient care; transportation; payment.**

(1) When any person who has communicable tuberculosis and who has relatives, friends, or a private or public agency or organization willing to undertake the obligation to support him or her or to aid in supporting him or her in any other state or country, the department may furnish him or her with the cost of transportation to such other state or country if it finds that the interest of the State of Nebraska and the welfare of such person will be promoted thereby. The expense of such transportation shall be paid by the department out of funds appropriated to it for the purpose of carrying out the Tuberculosis Detection and Prevention Act.

(2) No funds appropriated to the department for the purpose of carrying out the act shall be used for meeting the cost of the care, maintenance, or treatment

of any person who has communicable tuberculosis in a health care facility on either an inpatient or an outpatient basis, or otherwise, for directed health measures, or for transportation to another state or country, to the extent that such cost is covered by an insurer or other third-party payor or any other entity under obligation to such person by contract, policy, certificate, or any other means whatsoever. The department in no case shall expend any such funds to the extent that any such person is able to bear the cost of such care, maintenance, treatment, or transportation. To protect the health and safety of the public, the department may pay, in part or in whole, the cost of drugs and medical care used to treat any person for or to prevent the spread of communicable tuberculosis and for evaluation and diagnosis of persons who have been identified as contacts of a person with communicable tuberculosis. The department shall determine the ability of a person to pay by consideration of the following factors: (a) The person's age, (b) the number of his or her dependents and their ages and physical condition, (c) the person's length of care, maintenance, or treatment, (d) his or her liabilities, (e) the extent that such cost is covered by an insurer or other third-party payor, and (f) his or her assets. Pursuant to the Administrative Procedure Act, the department shall adopt and promulgate rules and regulations for making the determinations required by this subsection.

Rules, regulations, and orders in effect under this section prior to July 16, 2004, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

**Source:** Laws 1972, LB 1492, § 6; Laws 1996, LB 1044, § 665; Laws 2004, LB 1005, § 97; Laws 2009, LB195, § 82.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**ARTICLE 37**

**ENVIRONMENTAL HEALTH SPECIALISTS**

**Cross References**

**Environmental Health Specialists Practice Act**, see section 38-1301.

**Pure Food Act, Nebraska**, perform inspections, see section 81-2,239.

**State Board of Health**, duties, see section 71-2610.01.

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

**Section**

71-3701.	Transferred to section 71-3705.01.
71-3702.	Transferred to section 38-1302.
71-3703.	Transferred to section 38-1308.
71-3704.	Transferred to section 38-1309.
71-3705.	Repealed. Laws 2007, LB 463, § 1319.
71-3705.01.	Repealed. Laws 2007, LB 463, § 1319.
71-3706.	Transferred to section 38-1307.
71-3707.	Repealed. Laws 2007, LB 463, § 1319.
71-3708.	Repealed. Laws 2007, LB 463, § 1319.
71-3708.01.	Repealed. Laws 2007, LB 463, § 1319.
71-3709.	Repealed. Laws 2007, LB 463, § 1319.
71-3710.	Transferred to section 38-1310.
71-3711.	Repealed. Laws 2007, LB 463, § 1319.
71-3712.	Repealed. Laws 2007, LB 463, § 1319.
71-3713.	Transferred to section 38-1314.
71-3714.	Transferred to section 38-1315.
71-3715.	Repealed. Laws 2007, LB 463, § 1319.

**71-3701** Transferred to section 71-3705.01.

**71-3702** Transferred to section 38-1302.

**71-3703** Transferred to section 38-1308.

**71-3704** Transferred to section 38-1309.

**71-3705** Repealed. Laws 2007, LB 463, § 1319.

**71-3705.01** Repealed. Laws 2007, LB 463, § 1319.

**71-3706** Transferred to section 38-1307.

**71-3707** Repealed. Laws 2007, LB 463, § 1319.

**71-3708** Repealed. Laws 2007, LB 463, § 1319.

**71-3708.01** Repealed. Laws 2007, LB 463, § 1319.

**71-3709** Repealed. Laws 2007, LB 463, § 1319.

**71-3710** Transferred to section 38-1310.

**71-3711** Repealed. Laws 2007, LB 463, § 1319.

**71-3712** Repealed. Laws 2007, LB 463, § 1319.

**71-3713** Transferred to section 38-1314.

**71-3714** Transferred to section 38-1315.

**71-3715** Repealed. Laws 2007, LB 463, § 1319.

## ARTICLE 38

### PRACTICE OF PSYCHOLOGY

#### Cross References

**Alcohol and Drug Counseling Practice Act**, see section 38-301.

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

**Psychology Interjurisdictional Compact**, see section 38-3901.

**Psychology Practice Act**, see section 38-3101.

#### Section

71-3801. Transferred to section 71-1,206.

71-3802. Transferred to section 71-1,207.

71-3803. Repealed. Laws 1984, LB 481, § 45.

71-3804. Repealed. Laws 1984, LB 481, § 45.

71-3805. Repealed. Laws 1984, LB 481, § 45.

71-3806. Transferred to section 71-1,208.

71-3807. Transferred to section 71-1,209.

71-3808. Transferred to section 71-1,210.

71-3809. Repealed. Laws 1984, LB 481, § 45.

71-3810. Transferred to section 71-1,211.

71-3811. Transferred to section 71-1,212.

71-3812. Repealed. Laws 1984, LB 481, § 45.

71-3813. Transferred to section 71-1,213.

71-3814. Transferred to section 71-1,214.

71-3815. Repealed. Laws 1974, LB 811, § 21.

71-3816. Repealed. Laws 1984, LB 481, § 45.

## Section

71-3817. Transferred to section 71-1,215.  
71-3818. Transferred to section 71-1,216.  
71-3819. Transferred to section 71-1,217.  
71-3820. Repealed. Laws 1984, LB 481, § 45.  
71-3821. Repealed. Laws 1984, LB 481, § 45.  
71-3822. Repealed. Laws 1984, LB 481, § 45.  
71-3823. Repealed. Laws 1984, LB 481, § 45.  
71-3824. Repealed. Laws 1984, LB 481, § 45.  
71-3825. Transferred to section 71-1,218.  
71-3826. Repealed. Laws 1975, LB 279, § 75.  
71-3827. Transferred to section 71-1,219.  
71-3828. Transferred to section 71-1,220.  
71-3829. Transferred to section 71-1,221.  
71-3830. Repealed. Laws 1981, LB 545, § 52.  
71-3831. Repealed. Laws 1984, LB 481, § 45.  
71-3832. Transferred to section 71-1,222.  
71-3833. Transferred to section 71-1,223.  
71-3834. Transferred to section 71-1,224.  
71-3835. Transferred to section 71-1,225.  
71-3836. Transferred to section 71-1,226.

**71-3801 Transferred to section 71-1,206.**

**71-3802 Transferred to section 71-1,207.**

**71-3803 Repealed. Laws 1984, LB 481, § 45.**

**71-3804 Repealed. Laws 1984, LB 481, § 45.**

**71-3805 Repealed. Laws 1984, LB 481, § 45.**

**71-3806 Transferred to section 71-1,208.**

**71-3807 Transferred to section 71-1,209.**

**71-3808 Transferred to section 71-1,210.**

**71-3809 Repealed. Laws 1984, LB 481, § 45.**

**71-3810 Transferred to section 71-1,211.**

**71-3811 Transferred to section 71-1,212.**

**71-3812 Repealed. Laws 1984, LB 481, § 45.**

**71-3813 Transferred to section 71-1,213.**

**71-3814 Transferred to section 71-1,214.**

**71-3815 Repealed. Laws 1974, LB 811, § 21.**

**71-3816 Repealed. Laws 1984, LB 481, § 45.**

**71-3817 Transferred to section 71-1,215.**

**71-3818 Transferred to section 71-1,216.**

**71-3819 Transferred to section 71-1,217.**

**71-3820 Repealed. Laws 1984, LB 481, § 45.**

71-3821 Repealed. Laws 1984, LB 481, § 45.

71-3822 Repealed. Laws 1984, LB 481, § 45.

71-3823 Repealed. Laws 1984, LB 481, § 45.

71-3824 Repealed. Laws 1984, LB 481, § 45.

71-3825 Transferred to section 71-1,218.

71-3826 Repealed. Laws 1975, LB 279, § 75.

71-3827 Transferred to section 71-1,219.

71-3828 Transferred to section 71-1,220.

71-3829 Transferred to section 71-1,221.

71-3830 Repealed. Laws 1981, LB 545, § 52.

71-3831 Repealed. Laws 1984, LB 481, § 45.

71-3832 Transferred to section 71-1,222.

71-3833 Transferred to section 71-1,223.

71-3834 Transferred to section 71-1,224.

71-3835 Transferred to section 71-1,225.

71-3836 Transferred to section 71-1,226.

## ARTICLE 39

### INDOOR TANNING FACILITY ACT

#### Section

71-3901. Act, how cited.

71-3902. Terms, defined.

71-3903. Legislative intent.

71-3904. Applicability of act.

71-3905. Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.

71-3906. Operator, owner, or lessee; civil penalty.

71-3907. Operator, owner, or lessee; post warning sign; information.

71-3908. Operator, owner, or lessee; ensure compliance.

71-3909. Complaint; department; powers.

#### **71-3901 Act, how cited.**

Sections 71-3901 to 71-3909 shall be known and may be cited as the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 1.

#### **71-3902 Terms, defined.**

For purposes of the Indoor Tanning Facility Act:

(1) Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(2) Department means the Division of Public Health of the Department of Health and Human Services;

(3) Operator means a person designated by the tanning facility owner or tanning equipment lessee to operate, or to assist and instruct in the operation and use of, the tanning facility or tanning equipment;

(4) Tanning equipment means any device that emits electromagnetic radiation with wavelengths in the air between two hundred nanometers and four hundred nanometers and that is used for tanning of the skin. Tanning equipment includes, but is not limited to, a sunlamp, tanning booth, or tanning bed; and

(5) Tanning facility means a location, place, area, structure, or business that provides access to tanning equipment. Tanning facility includes, but is not limited to, any tanning business, salon, health club, apartment, or condominium, which has tanning equipment that is made available for public or commercial use, regardless of whether a fee is charged for access to the tanning equipment.

**Source:** Laws 2014, LB132, § 2.

#### **71-3903 Legislative intent.**

It is the intent of the Legislature that the Indoor Tanning Facility Act be implemented and enforced in a manner that ensures equal treatment of all tanning facilities regardless of the type of business or facility or number of pieces of tanning equipment at the tanning facility.

**Source:** Laws 2014, LB132, § 3.

#### **71-3904 Applicability of act.**

The Indoor Tanning Facility Act does not apply to:

(1) A physician licensed under the Uniform Credentialing Act who uses, in the practice of medicine, medical diagnostic and therapeutic equipment that emits ultraviolet radiation; or

(2) Any individual who owns tanning equipment exclusively for personal, noncommercial use.

**Source:** Laws 2014, LB132, § 4.

#### **Cross References**

Uniform Credentialing Act, see section 38-101.

#### **71-3905 Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.**

It shall be unlawful for an operator, an owner of a tanning facility, or a lessee of a tanning facility to allow any person less than sixteen years of age to use tanning equipment at the tanning facility unless the person is accompanied by a parent or legal guardian. Before each use of tanning equipment by any person less than sixteen years of age, the operator, owner, or lessee shall secure a statement signed at the tanning facility by the minor's parent or legal guardian stating that the person signing the statement is the minor's parent or legal guardian, that the parent or legal guardian has read and understood the warnings given by the tanning facility, that the parent or legal guardian consents to the minor's use of tanning equipment, and that the parent or legal

guardian agrees that the minor will use protective eyewear while using the tanning equipment. The operator, owner, or lessee shall require proof of age from each person before allowing the person access to tanning equipment. For purposes of this section, proof of age shall include, but not be limited to, a driver's license or other government-issued identification containing the person's date of birth and photograph or digital image.

**Source:** Laws 2014, LB132, § 5.

**71-3906 Operator, owner, or lessee; civil penalty.**

Any operator, owner of a tanning facility, or lessee of a tanning facility who allows any person less than sixteen years of age to use tanning equipment at the tanning facility without being accompanied by the parent or legal guardian who signed the statement required under section 71-3905 shall be subject to a civil penalty of one hundred dollars to be imposed and collected by the department. The department shall remit the civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2014, LB132, § 6.

**71-3907 Operator, owner, or lessee; post warning sign; information.**

(1) An operator, an owner of a tanning facility, or a lessee of a tanning facility shall post a warning sign in a conspicuous location in the tanning facility where it is readily visible by any person entering the tanning facility. The warning sign shall have black letters which are at least one-fourth inch in height.

(2) The warning sign shall include the following information:

DANGER — Ultraviolet Radiation

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injuries and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

WEAR PROTECTIVE EYEWEAR — Failure to do so may result in severe burns or long-term injury to eyes.

Medicines or cosmetics can increase your sensitivity to ultraviolet radiation. Consult your physician before using sunlamps if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of tanning equipment.

It is unlawful for a tanning facility to allow a person under sixteen years of age to use tanning equipment without being accompanied by the person's parent or legal guardian.

Any person may report a violation of the Indoor Tanning Facility Act to the Department of Health and Human Services.

**Source:** Laws 2014, LB132, § 7.

**71-3908 Operator, owner, or lessee; ensure compliance.**

An operator, an owner of a tanning facility, or a lessee of a tanning facility shall ensure that the tanning facility complies with all applicable federal laws and regulations and the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 8.

**71-3909 Complaint; department; powers.**

Upon receipt of a complaint regarding a tanning facility, the department, with the recommendation of the board, may inspect any tanning facility during the hours of operation of the tanning facility to ensure compliance with the Indoor Tanning Facility Act.

**Source:** Laws 2014, LB132, § 9.

**ARTICLE 40**

**TRANSACTIONS RELATING TO BLOOD AND HUMAN TISSUES**

**Cross References**

**Organ and tissue donations:**

- Blood, transactions prohibited, see section 71-4808.
- Bone marrow, see section 71-4819 et seq.
- Coroner, duties, see sections 23-1825 to 23-1832.
- Hospitals, protocol required, see sections 71-4814 and 71-4816.
- Revised Uniform Anatomical Gift Act, see section 71-4824.

**Section**

- 71-4001. Transactions, defined.
- 71-4002. Plasma donation; consent.

**71-4001 Transactions, defined.**

Procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, blood derivatives, and other human tissues such as corneas, bones, or organs for the purpose of injecting, transfusing, or transplanting any of them in the human body is declared for all purposes to be the rendition of a service by every person participating therein and whether or not any remuneration is paid therefor is declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, or other human tissues.

**Source:** Laws 1967, c. 434, § 1, p. 1323.

**71-4002 Plasma donation; consent.**

Any individual of sound mind and eighteen years of age or more may consent to donate plasma without the permission of a parent or guardian. The consent is not subject to later disaffirmance because of minority.

**Source:** Laws 2016, LB813, § 1.

**ARTICLE 41**

**DOWN SYNDROME DIAGNOSIS INFORMATION AND SUPPORT ACT**

**Section**

- 71-4101. Act, how cited.
- 71-4102. Terms, defined.
- 71-4103. Information support sheet.
- 71-4104. Department; duties; Down syndrome organization; include information on web site.



**DOWN SYNDROME DIAGNOSIS INFORMATION AND SUPPORT ACT § 71-4104**

**71-4101 Act, how cited.**

Sections 71-4101 to 71-4104 shall be known and may be cited as the Down Syndrome Diagnosis Information and Support Act.

**Source:** Laws 2016, LB891, § 1.

**71-4102 Terms, defined.**

For purposes of the Down Syndrome Diagnosis Information and Support Act:

(1) Department means the Division of Public Health of the Department of Health and Human Services;

(2) Down syndrome means a chromosomal condition caused by cell division that results in the presence of an extra whole or partial copy of chromosome 21;

(3) Down syndrome organization means any national, state, or local nonprofit organization primarily involved in providing advocacy, support, and education to individuals with Down syndrome and their parents;

(4) Health care practitioner means any person who is credentialed under the Uniform Credentialing Act to provide health or medical care in the ordinary course of business or practice of a profession, including a genetic counselor; and

(5) Parents means (a) expectant parents of a child who receive a test result from a prenatal screening or diagnostic test that indicates a high likelihood or the definite presence of Down syndrome, (b) parents of a child postnatally diagnosed with Down syndrome, and (c) a legal guardian of a child diagnosed with Down syndrome.

**Source:** Laws 2016, LB891, § 2.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-4103 Information support sheet.**

A health care practitioner who provides prenatal or postnatal care, who administers or requests administration of a prenatal or postnatal screening or diagnostic test that detects Down syndrome, and who receives a test result from such test that indicates a high likelihood or the definite presence of Down syndrome shall deliver to the parents the information support sheet provided by the department under section 71-4104.

**Source:** Laws 2016, LB891, § 3.

**71-4104 Department; duties; Down syndrome organization; include information on web site.**

(1) The department shall make the following information available:

(a) Up-to-date information about Down syndrome that has been reviewed by medical experts and Down syndrome organizations. The information shall be provided in a written format and shall include the following:

(i) A clinical course description, including possible physical, developmental, educational, and psychosocial outcomes;

(ii) Treatment and therapy options; and

(iii) Life expectancy; and

(b) Contact information for Down syndrome organizations that are nonprofit and that provide information and support services for parents, including first-call programs and information hotlines specific to Down syndrome, resource centers or clearinghouses, and other education and support programs for Down syndrome.

(2) The department shall post the information required in subsection (1) of this section on its web site and shall include an information support sheet to be delivered by health care practitioners to parents as prescribed in section 71-4103.

(3) The department shall ensure that the information required in subsection (1) of this section is culturally and linguistically appropriate for parents.

(4) A Down syndrome organization may request that the department include the organization's informational material and contact information on the web site. The department may add the information to the web site upon request.

**Source:** Laws 2016, LB891, § 4.

## ARTICLE 42

### STROKE SYSTEM OF CARE ACT

#### Section

71-4201. Act, how cited.

71-4202. Legislative findings.

71-4203. Terms, defined.

71-4204. Designation of hospitals; department; duties.

71-4205. Coordinating stroke care agreement; contents.

71-4206. Plan for triage and transfer of acute stroke patients.

71-4207. Stroke triage assessment tool; post on web site.

71-4208. Emergency medical service; use of stroke triage assessment tool; establish protocols.

71-4209. Stroke system of care task force; duties.

#### **71-4201 Act, how cited.**

Sections 71-4201 to 71-4209 shall be known and may be cited as the Stroke System of Care Act.

**Source:** Laws 2016, LB722, § 1.

#### **71-4202 Legislative findings.**

The Legislature finds that:

(1) Stroke is the fifth leading cause of death and the leading cause of disability according to the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services;

(2) Forecasting by the American Heart Association predicts stroke prevalence to increase by twenty-four and nine-tenths percent between 2010 and 2030;

(3) The cost of stroke continues to increase as total hospital charges for stroke in Nebraska increased by more than fifty-four million dollars between 2001 and 2010, from fifty-four million dollars to one hundred eight million dollars, with the average charge per stroke hospitalization at thirty-one thousand dollars in 2010 according to the 2011 Nebraska Heart Disease and Stroke Prevention

Program and Data Summary by the Nebraska Department of Health and Human Services;

(4) The rapid identification, diagnosis, and treatment of stroke can save the lives of stroke patients and in some cases reverse neurological damage such as paralysis and speech and language impairments;

(5) An effective system is needed in Nebraska communities in order to treat stroke patients in a timely manner and to improve the overall outcomes of stroke patients; and

(6) Creation and enhancement of stroke systems of care provide patients the highest quality care while ensuring seamless transitions along the care continuum.

**Source:** Laws 2016, LB722, § 2.

#### **71-4203 Terms, defined.**

For purposes of the Stroke System of Care Act:

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

(2) Hospital means a hospital as defined in section 71-419 and licensed under the Health Care Facility Licensure Act.

**Source:** Laws 2016, LB722, § 3.

#### **Cross References**

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

#### **71-4204 Designation of hospitals; department; duties.**

The department shall designate hospitals as comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, or acute stroke-ready hospitals based on certification from the American Heart Association, the Joint Commission on Accreditation of Healthcare Organizations, or another nationally recognized, guidelines-based organization that provides certification for stroke care, as such certification existed on July 19, 2018. The department shall compile and maintain a list of such hospitals and post the list on the department's web site. Before June 1 of each year, the department shall send the list to the physician medical director of each emergency medical service licensed pursuant to the Emergency Medical Services Practice Act.

**Source:** Laws 2016, LB722, § 4; Laws 2018, LB1034, § 66.  
Effective date July 19, 2018.

#### **Cross References**

**Emergency Medical Services Practice Act**, see section 38-1201.

#### **71-4205 Coordinating stroke care agreement; contents.**

A hospital that is designated as a comprehensive stroke center, a thrombectomy-capable stroke center, or a primary stroke center may enter into a coordinating stroke care agreement with an acute stroke-ready hospital to provide appropriate access to care for acute stroke patients. The agreement shall be in writing and shall include, at a minimum:

(1) A transfer agreement for the transport and acceptance of any stroke patient seen by the acute stroke-ready hospital for stroke treatment therapies which the acute stroke-ready hospital is not capable of providing; and

(2) Communication criteria and protocol with the acute stroke-ready hospital.

**Source:** Laws 2016, LB722, § 5; Laws 2018, LB1034, § 67.  
Effective date July 19, 2018.

**71-4206 Plan for triage and transfer of acute stroke patients.**

Beginning on January 1, 2017, a hospital that does not have certification described under section 71-4204 shall have a predetermined plan for the triage and transfer of acute stroke patients and shall file the plan annually with the department.

**Source:** Laws 2016, LB722, § 6.

**71-4207 Stroke triage assessment tool; post on web site.**

The department shall adopt and distribute a nationally recognized, standardized stroke triage assessment tool. The department shall post the stroke triage assessment tool on the department's web site and provide a copy of the assessment tool to each emergency medical service licensed pursuant to the Emergency Medical Services Practice Act.

**Source:** Laws 2016, LB722, § 7.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**71-4208 Emergency medical service; use of stroke triage assessment tool; establish protocols.**

(1) Beginning on January 1, 2017, an emergency medical service licensed pursuant to the Emergency Medical Services Practice Act shall use a stroke triage assessment tool that is substantially similar to the stroke triage assessment tool adopted by the department under section 71-4207.

(2) Beginning on January 1, 2017, a licensed emergency medical service shall establish pre-hospital-care protocols related to the assessment, treatment, and transport of a stroke patient by the emergency medical service.

**Source:** Laws 2016, LB722, § 8.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**71-4209 Stroke system of care task force; duties.**

(1) The department shall establish a stroke system of care task force to address matters of triage, treatment, and transport of possible acute stroke patients. The task force shall include representation from the department, including a program created by the department to address chronic disease prevention and control issues including cardiovascular health, the Emergency Medical Services Program created by the department, and the Office of Rural Health, the American Stroke Association, the Nebraska State Stroke Association, hospitals designated as comprehensive stroke centers under the Stroke System of Care Act, hospitals designated as primary stroke centers under the act, hospitals designated as thrombectomy-capable stroke centers under the act, rural hospitals, physicians, and emergency medical services licensed pursuant to the Emergency Medical Services Practice Act.

(2) The task force shall provide advice and recommendations to the department regarding the implementation of the Stroke System of Care Act. The task force shall focus on serving both rural and urban areas. The task force shall provide advice regarding protocols for the assessment, stabilization, and appropriate routing of stroke patients by emergency medical services and for coordination and communication between hospitals, comprehensive stroke centers, primary stroke centers, and other support services necessary to assure all residents of Nebraska have access to effective and efficient stroke care.

(3) The task force shall recommend eligible essential health care services for acute stroke care provided through telehealth as defined in section 71-8503.

**Source:** Laws 2016, LB722, § 9; Laws 2018, LB1034, § 68.  
Effective date July 19, 2018.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**ARTICLE 43**

**SWIMMING POOLS**

**Cross References**

Municipalities, powers and duties, see sections 13-304, 15-210, 16-695, 17-559, 17-948 et seq., and 19-1302.

**Section**

- 71-4301. Swimming pool, defined.
- 71-4302. Department of Health and Human Services; sanitary and safety requirements; adopt.
- 71-4303. Construction; permit; Department of Health and Human Services; issuance; when.
- 71-4304. Permit; application; requirements.
- 71-4305. Department of Health and Human Services; inspection; records; owners and operators; fees; exception.
- 71-4306. Inspection; violation of sections; effect.
- 71-4307. Violation; public nuisance; abatement.

**71-4301 Swimming pool, defined.**

For purposes of sections 71-4301 to 71-4307, unless the context otherwise requires, swimming pool means any artificial basin of water modified, improved, constructed, or installed solely for the purpose of public swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park. Swimming pool includes a spa, hot tub, or whirlpool or similar device which (1) is designed for recreational use and not to be drained, cleaned, and refilled after each individual use and (2) may consist of elements, including, but not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems, or any combination thereof. Swimming pool does not include an artificial lake, a pool at a private residence intended only for the use of the owner and guests, or a pool operated exclusively for medical treatment, physical therapy, water rescue training, or training of divers.

**Source:** Laws 1969, c. 760, § 1, p. 2875; Laws 2002, LB 1021, § 81.

**71-4302 Department of Health and Human Services; sanitary and safety requirements; adopt.**

The Department of Health and Human Services shall prepare, adopt, and have printed minimum sanitary and safety requirements in the form of regulations for the design, construction, equipment, and operation of swimming pools and bather preparation facilities. Such requirements shall include, but not be limited to, provisions for waiver or variance of design standards and the circumstances under which such waiver or variance may be granted.

**Source:** Laws 1969, c. 760, § 2, p. 2876; Laws 1996, LB 1044, § 669; Laws 2002, LB 1021, § 82; Laws 2007, LB296, § 580.

**71-4303 Construction; permit; Department of Health and Human Services; issuance; when.**

No swimming pool shall be constructed after January 1, 1970, unless and until plans, specifications, and any additional information relative to such pool as may be requested by the Department of Health and Human Services shall have been submitted to such department and after review by such department found to comply with the minimum sanitary and safety requirements provided in section 71-4302 and a permit for the construction of the pool issued by such department.

**Source:** Laws 1969, c. 760, § 3, p. 2876; Laws 1996, LB 1044, § 670; Laws 2007, LB296, § 581.

**71-4304 Permit; application; requirements.**

After January 1, 1970, swimming pools shall have equipment and shall be operated so as to comply with the minimum sanitary and safety requirements provided in section 71-4302. After such date no swimming pool shall operate until it has received a permit from the Department of Health and Human Services. Application for a permit to operate shall be submitted on forms provided by such department. Swimming pools constructed prior to January 1, 1970, which do not fully comply with the minimum sanitary and safety requirements as regards design and construction may be continued in use for such period as the department may authorize if the equipment and operation of such swimming pool comply with the minimum sanitary and safety requirements.

**Source:** Laws 1969, c. 760, § 4, p. 2876; Laws 1996, LB 1044, § 671; Laws 2007, LB296, § 582.

**71-4305 Department of Health and Human Services; inspection; records; owners and operators; fees; exception.**

(1) The Department of Health and Human Services shall make at least one inspection every year of each swimming pool to determine that such swimming pool complies with the minimum sanitary and safety requirements.

(2) The owner and operator of any swimming pool shall submit such operation and analytical records as may be requested at any time by the department to determine the sanitary and safety condition of the swimming pool.

(3) The department shall adopt and promulgate rules and regulations which classify swimming pools on the basis of criteria deemed appropriate by the department. The department shall charge engineering firms, swimming pool owners, and other appropriate parties fees established by rules and regulations

for the review of plans and specifications of a swimming pool, the issuance of a license or permit, the inspection of a swimming pool, and any other services rendered at a rate which defrays no more than the actual cost of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall not charge a municipal corporation an inspection fee for an inspection of a swimming pool owned by such municipal corporation.

(4) The department shall establish and collect fees for certificates of competency for swimming pool operators as provided in sections 38-151 to 38-157.

**Source:** Laws 1969, c. 760, § 5, p. 2876; Laws 1973, LB 583, § 12; Laws 1976, LB 440, § 1; Laws 1978, LB 812, § 2; Laws 1983, LB 617, § 23; Laws 1986, LB 1047, § 5; Laws 1996, LB 1044, § 672; Laws 2002, LB 1021, § 83; Laws 2003, LB 242, § 123; Laws 2007, LB296, § 583; Laws 2007, LB463, § 1217.

#### **71-4306 Inspection; violation of sections; effect.**

Whenever any duly authorized representative of the Department of Health and Human Services shall find that a swimming pool is being constructed, equipped, or operated in violation of any of the provisions of sections 71-4301 to 71-4307, the department may grant such time as in its opinion may reasonably be necessary for changing the construction or providing for the proper operation of the swimming pool to meet the provisions of sections 71-4301 to 71-4307. If and when the duly authorized representative of the department upon inspection and investigation of a swimming pool considers that the conditions are such as to warrant prompt closing of such swimming pool until the provisions of sections 71-4301 to 71-4307 are complied with, he or she shall notify the owner or operator of the swimming pool to prohibit any person from using the swimming pool and upon such notification to the sheriff and the county attorney of the county in which such pool is located, it shall be the duty of such county attorney and sheriff to see that the notice of the representative of the department shall be enforced. If and when the owner or operator of the pool has, in the opinion of the department, met the provisions of sections 71-4301 to 71-4307, the department may in writing authorize the use again of such swimming pool.

**Source:** Laws 1969, c. 760, § 6, p. 2876; Laws 1996, LB 1044, § 673; Laws 2007, LB296, § 584.

#### **71-4307 Violation; public nuisance; abatement.**

Any owner or operator of a swimming pool failing to comply with any of the provisions of sections 71-4301 to 71-4307 shall be guilty of maintaining a public nuisance and it shall be the duty of the county attorney of the county in which such swimming pool is located to act as provided by law for the abatement of public nuisances.

**Source:** Laws 1969, c. 760, § 7, p. 2877.

## ARTICLE 44

## RABIES

## Section

71-4401.	Terms, defined.
71-4402.	Vaccination against rabies; required; vaccine; sales.
71-4402.01.	Rules and regulations.
71-4402.02.	Hybrid animal; vaccination against rabies; required; vaccine; sales.
71-4402.03.	Control and prevention of rabies; rules and regulations.
71-4403.	Veterinarian; vaccination for rabies; certificate; contents.
71-4404.	Vaccination for rabies; cost; payment.
71-4405.	Vaccination; domestic animals exempt.
71-4406.	Seizure by rabies control authority; confinement by owner; test authorized.
71-4407.	Domestic or hybrid animal bitten by a rabid animal; disposition.
71-4408.	Rabies control authority; pounds; authorized; impoundment; notice; release; fee.
71-4409.	Rabies control authority; enforcement of sections; duties.
71-4410.	Violation; penalty; order for seizure.
71-4411.	Impoundment fees; payment.
71-4412.	Control of rabies; vaccination; enforcement; political subdivisions.

**71-4401 Terms, defined.**

For purposes of sections 71-4401 to 71-4412, unless the context otherwise requires:

(1) Domestic animal means any dog or cat, and cat means a cat which is a household pet;

(2) Vaccination against rabies means the inoculation of a domestic or hybrid animal with a rabies vaccine as approved by the rules and regulations adopted and promulgated by the department. Such vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska;

(3) Compendium means the compendium of animal rabies vaccine as provided by the National Association of State Public Health Veterinarians;

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

(5) Hybrid animal means any animal which is the product of the breeding of a domestic dog with a nondomestic canine species;

(6) Own, unless otherwise specified, means to possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than thirty days;

(7) Owner means any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged or fed within such person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than thirty days; and

(8) Rabies control authority means county, township, city, or village health and law enforcement officials who shall enforce sections 71-4401 to 71-4412 relating to the vaccination and impoundment of domestic or hybrid animals.



Such public officials are not responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

**Source:** Laws 1969, c. 445, § 1, p. 1484; Laws 1987, LB 104, § 1; Laws 1996, LB 1044, § 674; Laws 2000, LB 1115, § 75; Laws 2007, LB25, § 1; Laws 2007, LB296, § 585.

**71-4402 Vaccination against rabies; required; vaccine; sales.**

(1) Every domestic animal in the State of Nebraska shall be vaccinated against rabies with a licensed vaccine and revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. Young domestic animals shall be initially vaccinated at the age specified in such rules and regulations. Unvaccinated domestic animals acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate domestic animals pursuant to this section shall be sold only to licensed veterinarians.

**Source:** Laws 1969, c. 445, § 2, p. 1485; Laws 1987, LB 104, § 2; Laws 1990, LB 888, § 1; Laws 2007, LB25, § 2.

**71-4402.01 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to:

- (1) Determine rabid species of animals;
- (2) Determine rabid species of animals amenable to rabies protection by immunization; and
- (3) Determine tests for identifying animals afflicted with rabies.

When adopting and promulgating such rules and regulations, the department shall consider the general knowledge of the medical profession and related scientific fields, the compendium, and the recommendations of the United States Public Health Service.

**Source:** Laws 1987, LB 104, § 12.

**71-4402.02 Hybrid animal; vaccination against rabies; required; vaccine; sales.**

(1) Except as provided in subsection (3) of this section, every hybrid animal in the State of Nebraska shall be vaccinated against rabies and shall be revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. A young hybrid animal shall be initially vaccinated at the age specified in such rules and regulations. An unvaccinated hybrid animal acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate a hybrid animal pursuant to this section shall be sold only to licensed veterinarians.

(3) An owner of a hybrid animal in this state prior to the date of development of a licensed vaccine determined scientifically to be reliable in preventing rabies in a hybrid animal shall have one year after such date to comply with this section.

**Source:** Laws 2007, LB25, § 3.

**71-4402.03 Control and prevention of rabies; rules and regulations.**

The department shall adopt and promulgate rules and regulations for the control and prevention of rabies. Such rules and regulations shall generally comply with the compendium and the recommendations of the United States Public Health Service. The department may consider changes in the compendium and recommendations of the United States Public Health Service when adopting and promulgating such rules and regulations.

**Source:** Laws 2007, LB25, § 4.

**71-4403 Veterinarian; vaccination for rabies; certificate; contents.**

It shall be the duty of each veterinarian, at the time of vaccinating any domestic or hybrid animal, to complete a certificate of rabies vaccination which shall include, but not be limited to, the following information:

- (1) The owner's name and address;
- (2) An adequate description of the domestic or hybrid animal, including, but not limited to, such items as the domestic or hybrid animal's breed, sex, age, name, and distinctive markings;
- (3) The date of vaccination;
- (4) The rabies vaccination tag number;
- (5) The type of rabies vaccine administered;
- (6) The manufacturer's serial number of the vaccine used; and
- (7) The site of vaccination.

Such veterinarian shall issue a tag with the certificate of vaccination.

**Source:** Laws 1969, c. 445, § 3, p. 1485; Laws 1987, LB 104, § 3; Laws 2007, LB25, § 5.

**71-4404 Vaccination for rabies; cost; payment.**

The cost of rabies vaccination shall be borne by the owner of the domestic or hybrid animal.

**Source:** Laws 1969, c. 445, § 4, p. 1486; Laws 1987, LB 104, § 4; Laws 2007, LB25, § 6.

**71-4405 Vaccination; domestic animals exempt.**

(1) The provisions of sections 71-4401 to 71-4412 with respect to vaccination shall not apply to any domestic or hybrid animal owned by a person temporarily remaining within the State of Nebraska for less than thirty days, to any domestic or hybrid animal brought into the State of Nebraska for field trial or show purposes, or to any domestic or hybrid animal brought into the state for hunting purposes for a period of less than thirty days. Such domestic or hybrid animals shall be kept under strict supervision of the owner. It shall be unlawful to bring any domestic or hybrid animal into the State of Nebraska which does not comply with the animal health laws and import rules and regulations of the State of Nebraska which are applicable to domestic or hybrid animals.

(2) Domestic or hybrid animals assigned to a research institution or a similar facility shall be exempt from sections 71-4401 to 71-4412.

**Source:** Laws 1969, c. 445, § 5, p. 1486; Laws 1987, LB 104, § 5; Laws 2007, LB25, § 7.

**71-4406 Seizure by rabies control authority; confinement by owner; test authorized.**

(1) Any animal which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the rabies control authority for a period of not less than ten days if:

(a) The animal is suspected of having rabies, regardless of the species and whether or not the animal has been vaccinated;

(b) The animal is not vaccinated and is of a species determined by the department to be a rabid species; or

(c) The animal is of a species which has been determined by the department to be a rabid species not amenable to rabies protection by immunization, whether or not such animal has been vaccinated.

If, after observation and examination by a veterinarian, at the end of the ten-day period the animal shows no clinical signs of rabies, the animal may be released to its owner.

(2)(a) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an animal owned by another person, which animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, or if such injury to a person is caused by an owned animal determined by the department to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such animal shall be confined by the owner or other responsible person as required by the rabies control authority for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such ten-day period. If no clinical signs of rabies are found by the veterinarian, such animal may be released from confinement.

(b) A vaccinated animal owned by a law enforcement or governmental military agency which bites or causes an abrasion of the skin of any person during training or the performance of the animal's duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain ownership of and shall control and supervise the actions of such animal for a period of fifteen days following such injury. If during such period the death of the animal occurs for any reason, a veterinarian shall within twenty-four hours of the death examine the tissues of the animal for clinical signs of rabies.

(3) Any animal of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the ownership of which cannot be determined within seventy-two hours of the time of the bite or abrasion shall be immediately subject to any tests which the department believes are necessary to determine whether the animal is afflicted with rabies. The seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the animal to be destroyed.

**Source:** Laws 1969, c. 445, § 6, p. 1486; Laws 1987, LB 104, § 6; Laws 1989, LB 51, § 1; Laws 2007, LB25, § 8.

**71-4407 Domestic or hybrid animal bitten by a rabid animal; disposition.**

In the case of domestic or hybrid animals known to have been bitten by a rabid animal, the following rules shall apply:

(1) If the bitten or exposed domestic or hybrid animal has not been vaccinated in accordance with sections 71-4402 and 71-4402.02, such bitten or exposed domestic or hybrid animal shall be immediately destroyed unless the owner is willing to place such domestic or hybrid animal in strict isolation in a kennel under veterinary supervision for a period of not less than six months; and

(2) If the bitten or exposed domestic or hybrid animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, such domestic or hybrid animal shall be subject to the following procedure: (a) Such domestic or hybrid animal shall be immediately revaccinated and confined for a period of not less than thirty days following vaccination; (b) if such domestic or hybrid animal is not immediately revaccinated, such domestic or hybrid animal shall be confined in strict isolation in a kennel for a period of not less than six months under the supervision of a veterinarian; or (c) such domestic or hybrid animal shall be destroyed if the owner does not comply with either subdivision (a) or (b) of this subdivision.

**Source:** Laws 1969, c. 445, § 7, p. 1487; Laws 1987, LB 104, § 7; Laws 2007, LB25, § 9.

**71-4408 Rabies control authority; pounds; authorized; impoundment; notice; release; fee.**

(1) The rabies control authority may authorize an animal pound or pounds or may enter into a cooperative agreement with a licensed veterinarian for the establishment and operation of a pound.

(2) Any dog or hybrid of the family Canidae found outside the owner's premises whose owner does not possess a valid certificate of rabies vaccination and valid rabies vaccination tag for such dog or hybrid of the family Canidae shall be impounded. The rabies control authority may require the impoundment of domestic or hybrid animals other than dogs or hybrids of the family Canidae. All impounded domestic or hybrid animals shall be given proper care, treatment, and maintenance. Each impounded domestic or hybrid animal shall be kept and maintained at the pound for a period of not less than seventy-two hours unless reclaimed earlier by the owner.

(3) Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated domestic or hybrid animal may be reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and by complying with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. Any vaccinated domestic or hybrid animal impounded because its owner has not presented a valid certificate of rabies vaccination and a valid rabies vaccination tag for such domestic or hybrid animal may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all impoundment fees prior to release.

(4) At the expiration of impoundment, a domestic or hybrid animal may be claimed by payment of established pound fees and by compliance with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. If the domestic or hybrid animal is unclaimed at the end of five days, the authorities may dispose of the domestic or hybrid animal in accordance with applicable laws or rules and regulations.

**Source:** Laws 1969, c. 445, § 8, p. 1487; Laws 1987, LB 104, § 8; Laws 2007, LB25, § 10.

**71-4409 Rabies control authority; enforcement of sections; duties.**

The rabies control authority shall enforce sections 71-4401 to 71-4412.

In the event that the health and law enforcement officials of a county, township, city, or village fail to act with sufficient promptness in enforcing sections 71-4401 to 71-4412, the department may take all actions necessary for the proper administration and enforcement of such sections relating to vaccination and impoundment of domestic or hybrid animals. In such a case no authorized representatives of the department or any law enforcement officials enforcing such sections shall be responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

**Source:** Laws 1969, c. 445, § 9, p. 1488; Laws 1987, LB 104, § 9; Laws 2007, LB25, § 11.

**71-4410 Violation; penalty; order for seizure.**

The owner of any domestic or hybrid animal or any person who violates any of the provisions of sections 71-4401 to 71-4412 shall be guilty of a Class V misdemeanor. When the owner of any domestic or hybrid animal or other animal fails or refuses to comply with section 71-4406 or 71-4407, the rabies control authority shall obtain an order for seizure of such animal pursuant to Chapter 29, article 8.

**Source:** Laws 1969, c. 445, § 10, p. 1488; Laws 1978, LB 685, § 1; Laws 1987, LB 104, § 10; Laws 2007, LB25, § 12.

**71-4411 Impoundment fees; payment.**

Impoundment fees shall be paid by the owner. Fees for impoundment at public facilities shall be established by the rabies control authority.

**Source:** Laws 1969, c. 445, § 11, p. 1488.

**71-4412 Control of rabies; vaccination; enforcement; political subdivisions.**

In the State of Nebraska, all laws, ordinances, codes, or rules and regulations concerning the control of rabies or the vaccination of domestic or hybrid animals against rabies shall be enforced by the county, township, city, and village health and law enforcement officials or those other officers with regulatory authority as specified by the governing political subdivisions.

Whenever a county, township, city, or village requires the licensure of domestic or hybrid animals, it may require that, before a license is issued for the possession or maintenance of any domestic or hybrid animal in any such county, township, city, or village, the owner or keeper of the domestic or hybrid animal shall furnish to the clerk of such political subdivision a certification that the domestic or hybrid animal has been vaccinated against rabies in accordance with sections 71-4401 to 71-4412.

**Source:** Laws 1969, c. 445, § 12, p. 1489; Laws 1987, LB 104, § 11; Laws 2007, LB25, § 13.

**ARTICLE 45****PALLIATIVE CARE AND QUALITY OF LIFE ACT**

Section  
71-4501. Act, how cited.

## Section

71-4502. Legislative findings.

71-4503. Palliative Care Consumer and Professional Information and Education Program; established; Department of Health and Human Services; duties.

71-4504. Palliative Care and Quality of Life Advisory Council; created; duties; members; meetings; expenses.

**71-4501 Act, how cited.**

Sections 71-4501 to 71-4504 shall be known and may be cited as the Palliative Care and Quality of Life Act.

**Source:** Laws 2017, LB323, § 1.

**71-4502 Legislative findings.**

The Legislature finds that palliative care provides health care that improves the quality of life of a patient and his or her family as they face problems associated with life-threatening illness and is a critical part of health care delivery in the state.

**Source:** Laws 2017, LB323, § 2.

**71-4503 Palliative Care Consumer and Professional Information and Education Program; established; Department of Health and Human Services; duties.**

The Department of Health and Human Services shall establish the Palliative Care Consumer and Professional Information and Education Program. The department shall consult with the Palliative Care and Quality of Life Advisory Council created in section 71-4504 regarding the program. The department shall make information regarding the program available on its web site on or before June 30, 2018. The information shall include, but not be limited to:

- (1) Continuing education opportunities regarding palliative care for health care professionals;
- (2) Delivery of palliative care in the home and in primary, secondary, and tertiary environments;
- (3) Best practices in palliative care delivery;
- (4) Educational materials for consumers of palliative care;
- (5) Referral information for palliative care; and
- (6) Palliative care delivery systems.

**Source:** Laws 2017, LB323, § 3.

**71-4504 Palliative Care and Quality of Life Advisory Council; created; duties; members; meetings; expenses.**

(1) The Palliative Care and Quality of Life Advisory Council is created. The council shall consult with and advise the Department of Health and Human Services on matters relating to palliative care initiatives. The council shall:

- (a) Survey palliative care providers regarding best practices and recommendations;
- (b) Work with the department; and

(c) Make recommendations to the department regarding information on the web site pursuant to section 71-4503 as standards of care change.

(2) The council shall be composed of nine members appointed by the Governor for three-year terms. At least two of the members shall be physicians or nurses certified under the Hospice and Palliative Medicine Certification Program administered by the American Board of Internal Medicine. One member shall be an employee of the department familiar with hospice and palliative medicine. The remaining members shall (a) have palliative care work experience, (b) have experience with palliative care delivery models in a variety of settings, such as acute care, long-term care, and hospice care, and with a variety of populations, including pediatric patients, youth patients, and adult patients, or (c) be representatives of palliative care patients and their family caregivers.

(3) The council shall meet at least twice each calendar year. The members shall elect a chairperson and vice-chairperson. The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 but shall not receive any other compensation for such services.

(4) The department shall provide a place and time for the council to meet and provide staffing assistance as necessary for the meetings.

**Source:** Laws 2017, LB323, § 4.

**ARTICLE 46**

**MANUFACTURED HOMES, RECREATIONAL VEHICLES,  
AND MOBILE HOME PARKS**

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

Section	
71-4601.	Act, how cited.
71-4602.	Uniformity in construction and use of manufactured homes and recreational vehicles and their systems; purpose.
71-4603.	Terms, defined.
71-4604.	Plumbing, heating, and electrical systems; body and frame design and construction; installed equal to standards approved by commission.
71-4604.01.	Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Public Service Commission Housing and Recreational Vehicle Cash Fund.
71-4605.	Standards; compliance prior to sale, offer for sale, or lease.
71-4606.	Standards; exception; reciprocity with other states; effect; seal of state on reciprocity list; federal manufactured-home label; validity; restrictions on sale.
71-4607.	Repealed. Laws 1985, LB 313, § 31.
71-4608.	Violations; penalties; administrative fine.
71-4609.	Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.
71-4610.	Commission; inspections and investigations; purpose; notice of noncompliance.
71-4611.	Commission; powers and duties.
71-4612.	District court; enforcement.
71-4613.	Manufacturer of manufactured homes; duties.
71-4614.	Commission; require manufacturer to supply information to purchaser; manner.
71-4615.	Trade secret information; confidential; exceptions.
71-4616.	Manufacturer; notification of failure to conform; method; contents.
71-4617.	Manufacturer; furnish commission with information regarding hazards, defects, and noncompliance; disclosure to public; limitation; exception.

§ 71-4601

PUBLIC HEALTH AND WELFARE

Section

- 71-4618. Commission; notice to manufacturers concerning nonconformance; opportunity for evidence; determination by commission; effect.
- 71-4619. Manufacturer; maintain sales records; commission; rules and regulations.
- 71-4620. Manufacturer; compliance with standards or correction of nonconformance; conditions; powers of commission; remedy plan; replacement or refund; when provided.
- 71-4620.01. Existing rules, regulations, orders, suits, and proceedings; effect of transfer.

(b) MOBILE HOME PARKS

- 71-4621. Terms, defined.
- 71-4622. License required; term.
- 71-4623. License; application.
- 71-4624. License; application; fees; inspection.
- 71-4625. Sanitary facilities; permit; exception; application; issuance.
- 71-4626. Sanitary facilities permit; denial; procedures; appeal.
- 71-4627. Department; permit or license approved; records.
- 71-4628. Repealed. Laws 2008, LB 797, § 34.
- 71-4629. Department; utility systems and sanitary conditions; standards.
- 71-4630. Applicability of code; certificate of exemption; procedure.
- 71-4631. Licenses; issuance; denial, refusal of renewal, suspension, or revocation; civil penalty; grounds; notice; hearing; appeal.
- 71-4632. Violations; nuisance; penalty; removal.
- 71-4633. Operation without license; action by department; burden of proof.
- 71-4634. Act, how cited.
- 71-4635. Fire safety inspection; fee.

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

**71-4601 Act, how cited.**

Sections 71-4601 to 71-4620.01 shall be known and may be cited as the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

**Source:** Laws 1969, c. 557, § 1, p. 2272; Laws 1975, LB 300, § 1; Laws 1985, LB 313, § 5; Laws 1998, LB 1073, § 127.

**71-4602 Uniformity in construction and use of manufactured homes and recreational vehicles and their systems; purpose.**

The Legislature recognizes that uniformity in the manner of the body and frame design, construction, assembly, and use of manufactured homes and recreational vehicles and that of their systems, components, and appliances including their plumbing, heating, and electrical systems is desirable in order that owners may not be burdened with differing requirements and in order to promote construction suitable for the health of the numerous persons living in manufactured homes and recreational vehicles.

**Source:** Laws 1969, c. 557, § 2, p. 2272; Laws 1975, LB 300, § 2; Laws 1985, LB 313, § 6.

**71-4603 Terms, defined.**

For purposes of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, unless the context otherwise requires:

- (1) Camping trailer means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use;



- (2) Commission means the Public Service Commission;
- (3) Dealer means a person licensed by the state pursuant to the Motor Vehicle Industry Regulation Act as a dealer in manufactured homes or recreational vehicles or any other person, other than a manufacturer, who sells, offers to sell, distributes, or leases manufactured homes or recreational vehicles primarily to persons who in good faith purchase or lease a manufactured home or recreational vehicle for purposes other than resale;
- (4) Defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended but does not result in an unreasonable risk of injury or death to occupants;
- (5) Distributor means any person engaged in the sale and distribution of manufactured homes or recreational vehicles for resale;
- (6) Failure to conform means a defect, a serious defect, noncompliance, or an imminent safety hazard related to the code;
- (7) Fifth-wheel trailer means a unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed four hundred thirty square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;
- (8) Gross trailer area means the total plan area measured on the exterior to the maximum horizontal projections of exterior wall in the setup mode and includes all siding, corner trims, moldings, storage spaces, expandable room sections regardless of height, and areas enclosed by windows but does not include roof overhangs. Storage lofts contained within the basic unit shall have ceiling heights less than five feet and shall not constitute additional square footage. Appurtenances, as defined in subdivision (2)(k) of section 60-6,288, shall not be considered in calculating the gross trailer area as provided in such subdivision;
- (9) Imminent safety hazard means a hazard that presents an imminent and unreasonable risk of death or severe personal injury;
- (10) 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 in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than 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 the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on September 1, 2001, 42 U.S.C. 5401 et seq.;

(11) Manufactured-home construction means all activities relating to the assembly and manufacture of a manufactured home, including, but not limited to, activities relating to durability, quality, and safety;

(12) Manufactured-home safety means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(13) Manufacturer means any person engaged in manufacturing, assembling, or completing manufactured homes or recreational vehicles;

(14) Motor home means a vehicular unit primarily designed to provide temporary living quarters which are built into an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van, containing permanently installed independent life-support systems that meet the state standard for recreational vehicles and providing at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating, air conditioning, or both; a potable water supply system including a faucet and sink; separate one-hundred-twenty-nominal-volt electrical power supply; or LP gas supply;

(15) Noncompliance means a failure to comply with an applicable construction standard that does not constitute a defect, a serious defect, or an imminent safety hazard;

(16) Park trailer means a vehicular unit which meets the following criteria:

(a) Built on a single chassis mounted on wheels;

(b) Designed to provide seasonal or temporary living quarters which may be connected to utilities necessary for operation of installed fixtures and appliances;

(c) Constructed to permit setup by persons without special skills using only hand tools which may include lifting, pulling, and supporting devices; and

(d) Having a gross trailer area not exceeding four hundred thirty square feet when in the setup mode;

(17) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing manufactured homes or recreational vehicles;

(18) Purchaser means the first person purchasing a manufactured home or recreational vehicle in good faith for purposes other than resale;

(19) Recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which unit either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicle includes, but is not limited to, travel trailer, park trailer, camping trailer, truck camper, motor home, and van conversion;

(20) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the exterior of a manufactured home or recreational vehicle to evidence compliance with state standards. The federal manufactured-home label shall be recognized as a seal;

(21) Serious defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to the occupants;

(22) Travel trailer means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight as not to require special highway movement permits when towed by a motorized vehicle and of gross trailer area less than four hundred thirty square feet;

(23) Truck camper means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides and designed to be loaded onto and unloaded from the bed of a pickup truck; and

(24) Van conversion means a completed vehicle permanently altered cosmetically, structurally, or both which has been recertified by the state as a multipurpose passenger vehicle but which does not conform to or otherwise meet the definition of a motor home in this section and which contains at least one plumbing, heating, or one-hundred-twenty-nominal-volt electrical component subject to the provisions of the state standard for recreational vehicles. Van conversion does not include any such vehicle that lacks any plumbing, heating, or one-hundred-twenty-nominal-volt electrical system but contains an extension of the low-voltage automotive circuitry.

**Source:** Laws 1969, c. 557, § 3, p. 2272; Laws 1975, LB 300, § 3; Laws 1985, LB 313, § 7; Laws 1993, LB 121, § 435; Laws 1993, LB 536, § 86; Laws 1996, LB 1044, § 675; Laws 1998, LB 1073, § 128; Laws 2001, LB 376, § 6; Laws 2008, LB797, § 13; Laws 2010, LB816, § 90; Laws 2012, LB751, § 48.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

**71-4604 Plumbing, heating, and electrical systems; body and frame design and construction; installed equal to standards approved by commission.**

(1) All body and frame design and construction and all plumbing, heating, and electrical systems installed in manufactured homes or recreational vehicles manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the standards of the state agency responsible for regulation of manufactured homes or recreational vehicles as such standards existed on the date of manufacture.

(2) All body and frame design and construction and all plumbing, heating, and electrical systems installed in manufactured homes or recreational vehicles manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall be at least equal to the standards adopted and approved by the commission pursuant to its rules and regulations as such standards existed on the date of manufacture. The standards pertaining to manufactured homes shall conform to the Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, and the Manufactured Home Procedural and Enforcement Regulations, 24 C.F.R. 3282, adopted by the United States Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq.

Manufactured homes and recreational vehicles destined for sale outside the United States shall be exempt from such regulations if sufficient proof of such delivery is submitted to the commission for review. The standards pertaining to recreational vehicles shall (a) protect the health and safety of persons living in recreational vehicles, (b) assure reciprocity with other states that have adopted standards which protect the health and safety of persons living in recreational vehicles the purpose of which is to make uniform the law of those states which adopt them, and (c) allow variations from such uniform standards as will reduce unnecessary costs of construction or increase safety, durability, or efficiency, including energy efficiency, of the recreational vehicle without jeopardizing such reciprocity.

**Source:** Laws 1969, c. 557, § 4, p. 2273; Laws 1971, LB 654, § 1; Laws 1975, LB 300, § 4; Laws 1985, LB 313, § 8; Laws 1993, LB 536, § 87; Laws 1996, LB 1044, § 676; Laws 1998, LB 1073, § 129; Laws 2008, LB797, § 14.

**71-4604.01 Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Public Service Commission Housing and Recreational Vehicle Cash Fund.**

(1)(a) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of manufactured homes or recreational vehicles as such requirements existed on the date of manufacture.

(b) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the body and frame design and construction and the plumbing, heating, and electrical systems of such manufactured home or recreational vehicle have been installed in compliance with the standards adopted by the commission, applicable at the time of manufacture. Manufactured homes destined for sale outside the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. Recreational vehicles destined for sale or lease outside this state or the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. The commission shall issue the recreational-vehicle seal upon an inspection of the plans and specifications for the recreational vehicle or upon an actual inspection of the recreational vehicle during or after construction if the recreational vehicle is in compliance with state standards. The commission shall issue the manufactured-home seal in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2005. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of a violation of the conditions of issuance.

(2) The commission shall charge a fee in an amount determined annually by the commission after published notice and a hearing, for seals issued by the commission. A seal shall be placed on each manufactured home. The commission shall assess any costs of inspections conducted outside of Nebraska to the manufacturer in control of the inspected facility or to a manufacturer request-

ing such inspection. Such costs shall include, but not be limited to, actual travel, personnel, and inspection expenses and shall be paid prior to any issuance of seals.

(3) The commission shall adopt and promulgate rules and regulations governing the submission of plans and specifications of manufactured homes and recreational vehicles. A person who submits recreational-vehicle plans and specifications to the commission for review and approval shall be assessed an hourly rate by the commission for performing the review of the plans and specifications and related functions. The hourly rate shall be not less than fifteen dollars per hour and not more than seventy-five dollars per hour as determined annually by the commission after published notice and hearing based on the number of hours of review time as follows:

- (a) New model, one hour;
- (b) Quality control manual, two hours;
- (c) Typical, one-half hour;
- (d) Revisions, three-fourths hour;
- (e) Engineering calculations, three-fourths hour;
- (f) Initial package, fifteen hours; and
- (g) Yearly renewal, two hours plus the three-fourths hour for revisions.

(4) The commission shall charge each manufacturer an inspection fee of two hundred fifty dollars for each inspection of any new recreational vehicle manufactured by such manufacturer and not bearing a seal issued by the State of Nebraska or some reciprocal state.

(5) All fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be remitted to the State Treasurer for credit to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

**Source:** Laws 1975, LB 300, § 5; Laws 1983, LB 617, § 24; Laws 1985, LB 313, § 9; Laws 1991, LB 703, § 50; Laws 1993, LB 536, § 88; Laws 1996, LB 1044, § 677; Laws 1996, LB 1155, § 33; Laws 1998, LB 1073, § 130; Laws 2003, LB 241, § 2; Laws 2005, LB 319, § 1; Laws 2008, LB797, § 15; Laws 2010, LB849, § 26.

**71-4605 Standards; compliance prior to sale, offer for sale, or lease.**

Except as provided in section 71-4606, no dealer shall sell, offer for sale, or lease in this state any new or used manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, unless such manufactured home or recreational vehicle meets or exceeds the standards with respect to body and frame design and construction and plumbing, heating, and electrical systems established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

**Source:** Laws 1969, c. 557, § 5, p. 2273; Laws 1971, LB 654, § 2; Laws 1975, LB 300, § 6; Laws 1985, LB 313, § 10.

**71-4606 Standards; exception; reciprocity with other states; effect; seal of state on reciprocity list; federal manufactured-home label; validity; restrictions on sale.**

If any other state has plumbing, heating, electrical, or body and frame design and construction codes for recreational vehicles at least equal to those established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the commission, upon determining that such standards are being enforced by such other state, shall place such other state on a reciprocity list, which list shall be available to any interested person. Any recreational vehicle which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A manufactured home manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label issued by this state or by a state which has been placed on the reciprocity list shall not be permitted to be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor delivered from this state into any other state or jurisdiction unless destined for sale outside the United States. A recreational vehicle manufactured in this state, which is offered for sale, sold, or leased by a manufacturer, dealer, or other person anywhere outside this state, shall not be required to bear the seal issued by this state. If a recreational vehicle has a certificate of title or other certification from a state on the reciprocity list, a dealer may sell it unless he or she has actual knowledge that the recreational vehicle does not meet the standards of the state which has issued a certificate of title or other certification for it, so long as it bears the seal issued by this state or a state on the reciprocity list. No dealer or distributor shall sell a manufactured home or recreational vehicle if it contains a defect, a serious defect, or an imminent safety hazard.

**Source:** Laws 1969, c. 557, § 6, p. 2273; Laws 1971, LB 654, § 3; Laws 1975, LB 300, § 7; Laws 1985, LB 313, § 11; Laws 1993, LB 536, § 89; Laws 1996, LB 1155, § 34; Laws 1998, LB 1073, § 131.

**71-4607 Repealed. Laws 1985, LB 313, § 31.**

**71-4608 Violations; penalties; administrative fine.**

(1) Any person who is in violation of any provision of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles regarding a used manufactured home or recreational vehicle or who manufactures unless destined for sale outside the United States, sells, offers for sale, or leases in this state any used manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label or the recreational-vehicle seal issued by this state or by a state which has been placed on the reciprocity list as required by the code shall be guilty of a Class I misdemeanor. Nothing in the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be construed to require a seal for any recreational vehicle manufactured in this state which is sold or leased outside this state.

(2) No person shall:

(a) Manufacture for sale, lease, sell, offer for sale or lease, or introduce, deliver, or import into this state any manufactured home or recreational vehicle which is manufactured on or after the effective date of any applicable standard of the commission which does not comply with such standard;

(b) Fail or refuse to permit access to or copying of records, fail to make reports or provide information, or fail or refuse to permit entry or inspection as provided in section 71-4610;

(c) Fail to furnish notification to the purchaser of any manufactured home of any defect as required by 42 U.S.C. 5414 or to the purchaser of any recreational vehicle as provided in section 71-4616;

(d) Fail to issue a certification required by 42 U.S.C. 5415 or issue a certification to the effect that a manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(e) Fail to establish and maintain such records, make such reports, and provide such information as the commission may reasonably require to enable it to determine whether there is compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq., or the standards adopted by the commission for recreational-vehicle construction or fail to permit, upon request of a person duly authorized by the commission, inspection of appropriate books, papers, records, and documents relative to determining whether a manufacturer, distributor, or dealer has acted or is acting in compliance with the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq.; or

(f) Issue a certification pursuant to 42 U.S.C. 5403(a) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(3) Subdivision (2)(a) of this section shall not apply to the sale or the offer for sale of any manufactured home or recreational vehicle after the first purchase of it in good faith for purposes other than resale.

(4) Subdivision (2)(a) of this section shall not apply to any person who establishes that he or she did not have reason to know in the exercise of due care that such manufactured home or recreational vehicle was not in conformity with applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or the standards adopted by the commission for recreational-vehicle construction or any person who, prior to such first purchase, holds a certificate by the manufacturer or importer of such manufactured home or recreational vehicle to the effect that such manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or that such recreational vehicle conforms to the standards adopted by the commission for recreational-vehicle construction unless such person knows that such manufactured home or recreational vehicle does not so conform.

(5) Any person or officer, director, or agent of a corporation who willfully or knowingly violates subsection (2) of this section in any manner which threatens the health or safety of any purchaser shall be guilty of a Class I misdemeanor.

(6) The commission may administratively fine pursuant to section 75-156 any person who violates the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule or regulation adopted and promulgated under the code.

**Source:** Laws 1969, c. 557, § 8, p. 2274; Laws 1975, LB 300, § 20; Laws 1977, LB 39, § 176; Laws 1985, LB 313, § 12; Laws 1993, LB 536, § 90; Laws 1996, LB 1155, § 35; Laws 1998, LB 1073, § 132; Laws 2005, LB 319, § 2; Laws 2008, LB797, § 16.

**71-4609 Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.**

(1) The commission shall administer the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The commission may adopt and promulgate, amend, alter, or repeal general rules and regulations of procedure for (a) administering the provisions of the code, (b) issuing seals, (c) obtaining statistical data respecting the manufacture and sale of manufactured homes and recreational vehicles, and (d) prescribing means, methods, and practices to make effective such provisions.

(2) The commission shall refuse to issue a seal to any manufacturer or other person for any manufactured home or recreational vehicle found to be not in compliance with its standards governing body and frame design and construction or plumbing, heating, or electrical systems for manufactured homes or recreational vehicles or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer or other person may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(3) The issuance of seals may be suspended or revoked as to any manufacturer or other person who has not complied with any provision of the code or with any rule, regulation, or standard adopted and promulgated under the code or who is convicted of violating section 71-4608, and issuance of the seals shall not be resumed until such manufacturer or other person submits sufficient proof that the conditions which caused the lack of compliance or the violation have been remedied. Any manufacturer or other person may request a hearing before the commission on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension or revocation by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(4) The commission may conduct hearings and presentations of views consistent with the regulations adopted by the United States Department of Housing and Urban Development and adopt and promulgate such rules and regulations as are necessary to carry out this function.

(5) The commission shall establish a monitoring inspection fee in an amount approved by the United States Secretary of Housing and Urban Development, which fee shall be an amount paid to the commission by the manufacturer for each manufactured-home seal issued in the state. An additional monitoring inspection fee established by the United States Secretary of Housing and Urban Development shall be paid by the manufacturer to the secretary who shall distribute the fees collected from all manufactured-home manufacturers based on provisions developed and approved by the secretary.

**Source:** Laws 1969, c. 557, § 9, p. 2274; Laws 1975, LB 300, § 21; Laws 1981, LB 545, § 25; Laws 1985, LB 313, § 13; Laws 1988, LB 352, § 134; Laws 1993, LB 536, § 91; Laws 1998, LB 1073, § 133; Laws 2002, LB 93, § 16; Laws 2013, LB545, § 3.

**Cross References**

**Administrative Procedure Act**, see section 84-920.



**71-4610 Commission; inspections and investigations; purpose; notice of noncompliance.**

(1) The commission may conduct inspections and investigations as may be necessary to enforce the standards adopted under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or to carry out its duties pursuant to the code. The commission shall furnish the appropriate state and county officials any information obtained indicating noncompliance with such standards for appropriate action.

(2) For purposes of enforcement of the code and the rules, regulations, and standards adopted and promulgated by the commission pursuant to the code, persons duly designated by the commission, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) Enter, at reasonable times and without advance notice, any factory, warehouse, or other establishment or place in which manufactured homes or recreational vehicles are manufactured, stored, offered for sale, or held for lease or sale; and

(b) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or other establishment or place and inspect such books, papers, records, and documents as are set forth in section 71-4611. Each such inspection shall be commenced and completed with reasonable promptness.

**Source:** Laws 1975, LB 300, § 9; Laws 1985, LB 313, § 14; Laws 1993, LB 536, § 92; Laws 1998, LB 1073, § 134.

**71-4611 Commission; powers and duties.**

For purposes of carrying out the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the commission may:

(1) Hold such hearings, take such testimony, act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the commission deems advisable. Witnesses summoned pursuant to this section shall be paid the same fees as are paid witnesses in the district courts of the state and mileage as provided in section 81-1176;

(2) Examine and copy any documentary evidence of any person having materials or information relevant to any function of the commission under the code;

(3) Require, by general or special orders, any person to file, in such form as the commission may prescribe, reports or answers in writing to specific questions relating to any function of the commission under the code. Such reports and answers shall be made under oath or otherwise and shall be filed with the commission within such reasonable period as the commission may prescribe; and

(4) Make available to the public any information which may indicate the existence of a failure to comply which relates to manufactured-home or recreational-vehicle construction or safety or of the failure of a manufactured home or recreational vehicle to comply with applicable standards. The commission shall disclose so much of other information obtained under this subdivision to the public as it determines will assist in carrying out the code, but it

shall not under the authority of this subdivision make available or disclose to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless the commission determines that it is necessary to carry out the purposes of the code.

**Source:** Laws 1975, LB 300, § 10; Laws 1981, LB 204, § 129; Laws 1985, LB 313, § 15; Laws 1993, LB 536, § 93; Laws 1998, LB 1073, § 135.

**71-4612 District court; enforcement.**

Any district court of this state in which any action is instituted in the case of any willful or negligent refusal to obey a subpoena or order of the commission issued pursuant to section 71-4611, may issue an order requiring compliance therewith. Any person who fails to obey such order of the court shall be guilty of contempt of court and may be punished by such court accordingly.

**Source:** Laws 1975, LB 300, § 11; Laws 1998, LB 1073, § 136.

**71-4613 Manufacturer of manufactured homes; duties.**

Each manufacturer of manufactured homes which selects the commission to perform plan review shall:

(1) Submit, in accordance with regulations and standards adopted by the United States Secretary of Housing and Urban Development, the building plans for every model of its manufactured homes to the commission for the purpose of inspection. The manufacturer shall certify that each building plan meets the standards in force at that time before the respective model is produced;

(2) Establish and maintain records, make reports, and provide information as the commission may reasonably require to enable it to determine whether such manufacturer or any distributor or dealer has acted or is acting in compliance with the Uniform Standard Code for Manufactured Homes and Recreational Vehicles and standards adopted pursuant thereto;

(3) Upon request of a person duly designated by the commission, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or any distributor or dealer has acted or is acting in compliance with the code and standards adopted pursuant to the code; and

(4) Provide to the commission all performance data and other technical data related to performance and safety as may be required by the commission to carry out the purposes of the code. Such data shall include records of tests and test results which the commission may require to be performed.

**Source:** Laws 1975, LB 300, § 12; Laws 1985, LB 313, § 16; Laws 1993, LB 536, § 94; Laws 1998, LB 1073, § 137.

**71-4614 Commission; require manufacturer to supply information to purchaser; manner.**

The commission may require the manufacturer to give notification of performance and technical data to:

(1) Each prospective purchaser before the first sale for purposes other than resale at each location where any such manufacturer's manufactured homes or recreational vehicles are offered for sale by a person with whom such manufac-

turer has a contractual, proprietary, or other legal relationship and in a manner determined by the commission to be appropriate, which notification may include, but need not be limited to, printed matter that is both available for retention by such prospective purchaser and sent by mail to such prospective purchaser upon his or her request; and

(2) The first person who purchases a manufactured home or recreational vehicle for purposes other than resale, at the time of such purchase or in printed matter placed in the manufactured home or recreational vehicle.

**Source:** Laws 1975, LB 300, § 13; Laws 1985, LB 313, § 17; Laws 1993, LB 536, § 95; Laws 1998, LB 1073, § 138.

**71-4615 Trade secret information; confidential; exceptions.**

All information reported to or otherwise obtained by the commission or its duly authorized representatives pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out the code or, when relevant, in any proceeding under the code.

**Source:** Laws 1975, LB 300, § 14; Laws 1985, LB 313, § 18; Laws 1998, LB 1073, § 139.

**71-4616 Manufacturer; notification of failure to conform; method; contents.**

(1) Every manufacturer shall furnish notification of any failure to conform in any manufactured home or recreational vehicle produced by such manufacturer which the manufacturer determines, in good faith, violates a standard adopted by the commission or which constitutes an imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or non-compliance determined to be in a class of manufactured homes or recreational vehicles to the purchaser of such manufactured home or recreational vehicle, within a reasonable time after such manufacturer has discovered the failure to conform.

(2) The notification required by this section shall be accomplished:

(a) By certified mail to the first purchaser, not including any dealer or distributor of such manufacturer, of the manufactured home or recreational vehicle containing the failure to conform and to any subsequent purchaser to whom any warranty on such manufactured home or recreational vehicle has been transferred;

(b) By certified mail to any other person who is a registered owner of such manufactured home or recreational vehicle and whose name and address has been ascertained pursuant to procedures established under section 71-4619; and

(c) By certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such manufactured home or recreational vehicle was delivered.

(3) The notification required by subsection (1) of this section shall contain a clear description of such failure to conform, an evaluation of the risk to occupant safety reasonably related to such failure to conform, and a statement

of the measures needed to repair the failure to conform. The notification shall also inform the owner whether the failure to conform is a construction or safety failure to conform which the manufacturer will have corrected at no cost to the owner of the manufactured home or recreational vehicle or a failure to conform which must be corrected at the expense of the owner.

**Source:** Laws 1975, LB 300, § 15; Laws 1985, LB 313, § 19; Laws 1993, LB 536, § 96; Laws 1998, LB 1073, § 140.

**71-4617 Manufacturer; furnish commission with information regarding hazards, defects, and noncompliance; disclosure to public; limitation; exception.**

Every manufacturer shall furnish to the commission a true or representative copy of all notices, bulletins, and other communications sent to the dealers of the manufacturer or to purchasers of manufactured homes or recreational vehicles of the manufacturer regarding any imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or a noncompliance determined to be in a class of manufactured homes or recreational vehicles produced by the manufacturer. The commission shall disclose to the public so much of the information contained in such notices or other information obtained pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles as it deems will assist in carrying out the purposes of the code, but it shall not disclose any information which contains or relates to a trade secret or which, if disclosed, would put the manufacturer at a substantial competitive disadvantage, unless the commission determines that such disclosure is necessary to carry out the purposes of the code.

**Source:** Laws 1975, LB 300, § 16; Laws 1985, LB 313, § 20; Laws 1993, LB 536, § 97; Laws 1998, LB 1073, § 141.

**71-4618 Commission; notice to manufacturers concerning nonconformance; opportunity for evidence; determination by commission; effect.**

(1) If the commission determines that any manufactured home or recreational vehicle (a) does not comply with an applicable standard adopted by the commission or (b) contains a failure to conform which constitutes an imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or a noncompliance determined to be in a class of manufactured homes or recreational vehicles, it shall immediately notify the manufacturer of such failure to conform. The notice shall contain the findings of the commission and shall include all information upon which the findings are based.

(2) The commission shall afford such manufacturer an opportunity to present its views and supporting evidence to establish that there is no failure to conform. If, after such presentation by the manufacturer, the commission determines that there is a failure to conform with applicable standards or a failure to conform which constitutes a serious defect or an imminent safety hazard, the commission shall direct the manufacturer to furnish the notification specified in section 71-4616.

**Source:** Laws 1975, LB 300, § 17; Laws 1985, LB 313, § 21; Laws 1993, LB 536, § 98; Laws 1998, LB 1073, § 142.

**71-4619 Manufacturer; maintain sales records; commission; rules and regulations.**

Every manufacturer shall maintain a record of the name and address of the first purchaser of each manufactured home or recreational vehicle for purposes other than resale and, to the maximum extent feasible and reasonable, shall maintain procedures for ascertaining the name and address of any subsequent purchaser and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each manufactured home or recreational vehicle produced by a manufacturer. The commission may establish by rule and regulation procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this section.

**Source:** Laws 1975, LB 300, § 18; Laws 1985, LB 313, § 22; Laws 1993, LB 536, § 99; Laws 1998, LB 1073, § 143.

**71-4620 Manufacturer; compliance with standards or correction of nonconformance; conditions; powers of commission; remedy plan; replacement or refund; when provided.**

(1) A manufacturer required to furnish notification of a failure to conform under section 71-4616 or 71-4618 shall also bring the manufactured home or recreational vehicle into compliance with applicable commission standards and correct the failure to conform or have the failure to conform corrected within a reasonable period of time at no expense to the owner if the failure to conform presents an unreasonable risk of injury or death to occupants and the failure to conform can be related to an error by the manufacturer in design or assembly.

(2) The commission may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(3) The manufacturer shall submit a remedy plan for repairing such failure to conform to the commission for its approval, or the manufacturer shall notify the commission of the corrective action the manufacturer has taken and request state approval. Whenever a manufacturer is required to correct a failure to conform, the commission shall approve with or without modification, after consultation with the manufacturer, the manufacturer's remedy plan, including the date when and the method by which the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the failure to conform, unless the commission grants an extension of such period for good cause shown. The manufacturer shall implement any remedy plan approved by the commission.

(4) When a failure to conform cannot be adequately repaired within sixty days from the date of discovery or determination of the failure to conform, the commission may require that the manufactured home or recreational vehicle be replaced with a new or equivalent manufactured home or recreational vehicle without charge or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the manufactured home or recreational vehicle has been in the possession of the owner for more than one year.

**Source:** Laws 1975, LB 300, § 19; Laws 1985, LB 313, § 23; Laws 1993, LB 536, § 100; Laws 1998, LB 1073, § 144.

**71-4620.01 Existing rules, regulations, orders, suits, and proceedings; effect of transfer.**

All rules, regulations, and orders of the Department of Health and Human Services Regulation and Licensure or its predecessor agency adopted prior to May 1, 1998, in connection with the powers, duties, and functions transferred to the Public Service Commission under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to May 1, 1998, or which could have been commenced prior to that date, by or against such department or agency, or the director or employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from such department or agency to the commission.

On and after May 1, 1998, unless otherwise specified, whenever any provision of law refers to such department or agency in connection with duties and functions transferred to the commission, the law shall be construed as referring to the commission.

Any costs incurred by the department and associated with the transfer of powers, duties, and functions to the commission under the code shall be borne by the commission.

**Source:** Laws 1998, LB 1073, § 145.

**(b) MOBILE HOME PARKS****71-4621 Terms, defined.**

As used in the Uniform Standard Code for Mobile Home Parks, unless the context otherwise requires:

(1) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit. Mobile home includes a manufactured home as defined in section 71-4603;

(2) Mobile home lot means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants;

(3) Mobile home park means a parcel or contiguous parcels of land which have been so designated and improved that it contains two or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy. The term mobile home park shall not be construed to include mobile homes, buildings, tents, or other structures temporarily maintained by any individual, corporation, limited liability company, company, or other entity on its own premises and used exclusively to house its own labor force;

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

(5) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock company or association, political

subdivision, governmental agency, or other legal entity, and includes any trustee, receiver, assignee, or other legal representative thereof.

**Source:** Laws 1976, LB 91, § 1; Laws 1985, LB 313, § 24; Laws 1993, LB 121, § 436; Laws 1996, LB 1044, § 678; Laws 2007, LB296, § 586.

**71-4622 License required; term.**

No person shall establish, conduct, operate or maintain a mobile home park within this state without first obtaining an annual license therefor from the department. Such license shall be issued for the calendar year applied for and shall expire at midnight on December 31 of such year.

**Source:** Laws 1976, LB 91, § 2.

**71-4623 License; application.**

The application for such annual license to conduct, operate, and maintain a mobile home park shall be submitted in writing or by electronic format and shall include the full name and address of the applicant or applicants, the names and addresses of the partners if the applicant is a partnership, the names and addresses of the members if the applicant is a limited liability company, or the names and addresses of the officers if the applicant is a corporation, and the current or most recent occupation of the applicant at the time of the filing of the application, and such other pertinent data as the department may require by regulation. If the applicant is an individual, the application shall include the applicant's social security number.

**Source:** Laws 1976, LB 91, § 3; Laws 1993, LB 121, § 437; Laws 1997, LB 752, § 183; Laws 2008, LB797, § 17.

**71-4624 License; application; fees; inspection.**

(1) The application for the first or initial annual license shall be submitted with the requirements mentioned in section 71-4623 accompanied by the appropriate fees. The department by regulation shall charge engineering firms, mobile home park owners and operators, and other appropriate parties fees established by regulation for the review of plans and specifications of a mobile home park, the issuance of a license or permit, the inspection of a mobile home park, and any other services rendered at a rate which defrays no more than the actual costs of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure.

(2) All fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the Uniform Standard Code for Mobile Home Parks.

(3) When any application is received, the department shall cause the mobile home park and appurtenances to be inspected by representatives of the department. When such inspection has been made and the department finds that all of the provisions of the Uniform Standard Code for Mobile Home Parks and the rules, regulations, and standards of the department have been met by the applicant, the department shall issue an annual license. Inspection by the

department or its authorized representatives at any time of a mobile home park shall be a condition of continued licensure.

**Source:** Laws 1976, LB 91, § 4; Laws 1983, LB 617, § 25; Laws 1984, LB 916, § 63; Laws 1986, LB 1047, § 6; Laws 1991, LB 703, § 51; Laws 1996, LB 1044, § 679; Laws 2007, LB296, § 587.

**71-4625 Sanitary facilities; permit; exception; application; issuance.**

No person shall construct, expand, remodel or make alterations to the sanitary facilities in a mobile home park within this state without first obtaining a permit therefor from the department, except that no such permit shall be required in the making of minor repairs or in matters of general maintenance. The application for such permit shall be made to the department in such manner as may be prescribed by regulations of the department, which shall require the applicant to supply plans and specifications and otherwise provide a description of the nature, type, location and extent of the sanitary facilities contemplated. When the application has been approved, the department shall issue a permit to the applicant to construct, expand, remodel or make alterations to sanitary facilities, including water and sewage disposal, upon a mobile home park and the appurtenances thereto according to the plans and specifications and other data submitted with the approved application. No approval of plans and specifications and issuance of a permit to construct, expand, remodel or make alterations upon a mobile home park and the appurtenances thereto by the department shall be made unless such park is in compliance with the provisions of sections 71-4621 to 71-4634 and the rules, regulations and standards of the department. Such a permit does not relieve the applicant from obtaining building permits when located within a municipality or county having a building code or from complying with any other municipal or county resolution, ordinance, or regulation applicable thereto, and not in conflict with sections 71-4621 to 71-4634.

**Source:** Laws 1976, LB 91, § 5.

**71-4626 Sanitary facilities permit; denial; procedures; appeal.**

If the application for a permit to construct, expand, remodel, or make alterations upon a mobile home park and the appurtenances thereto, pursuant to section 71-4625, is denied by the department, it shall so state in writing, giving the reasons for denying the application. If the objection can be corrected, the applicant may amend his or her application and resubmit it for approval. No such permit shall be denied except after due notice and opportunity for a hearing before the department pursuant to the Administrative Procedure Act. Any denial of such permit may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1976, LB 91, § 6; Laws 1988, LB 352, § 135.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-4627 Department; permit or license approved; records.**

When the department has approved an application for a permit to construct, expand, remodel or make alterations upon a mobile home park or appurtenances thereto, pursuant to section 71-4625, or a license to establish, conduct,



operate or maintain a mobile home park, it shall retain the original and keep a file thereof. One copy shall be returned to the applicant or his agent.

**Source:** Laws 1976, LB 91, § 7.

**71-4628 Repealed. Laws 2008, LB 797, § 34.**

**71-4629 Department; utility systems and sanitary conditions; standards.**

The department shall adopt, promulgate, and enforce by rules and regulations standards governing utility systems and sanitary conditions for mobile home parks. The department shall not adopt or enforce by rules and regulations any design, construction, or land-use standards for any mobile home park.

**Source:** Laws 1976, LB 91, § 9; Laws 1997, LB 622, § 108.

**71-4630 Applicability of code; certificate of exemption; procedure.**

(1) The Uniform Standard Code for Mobile Home Parks shall not apply to any mobile home park located within the jurisdiction of any city, village, or county which provides for the regulation of mobile home parks by resolution, ordinance, or regulation which at a minimum is not less stringent than the then current standards and specifications, and all subsequent revisions and amendments thereto, approved, adopted, and promulgated by the department, as such standards and specifications apply to mobile home parks. No such resolution, ordinance, or regulation shall become effective until a certificate of exemption has been issued by the department. Such certificate of exemption shall be available for inspection in the office of the city or county clerk as the case may be.

(2) If the department shall determine at any time after the issuance of such a certificate of exemption that such a resolution, ordinance, or regulation is being enforced in a manner contrary to or inconsistent with the standards mentioned in subsection (1) of this section or is otherwise being improperly enforced in any city, village, or county holding a certificate of exemption, the department may revoke the certificate of exemption and the Uniform Standard Code for Mobile Home Parks shall apply in such city, village, or county until such standards are met and enforced and a new certificate is issued.

(3) Any city, village, or county desiring a certificate of exemption shall make application for such certificate by filing a petition for a certificate of exemption with the department. The department shall promptly investigate such petition. If the recommendation of the department is against the granting of a certificate of exemption and the applicant requests that a formal hearing be held, a formal hearing shall be held on the questions of whether (a) the resolution, ordinance, or regulation is at a minimum as stringent as the standards mentioned in subsection (1) of this section, (b) the resolution, ordinance, or regulation is being enforced in a manner contrary to or inconsistent with such standards or is otherwise being improperly enforced, and (c) adequate provisions have been made for enforcement. The burden of proof thereof shall be upon the applicant. A like formal hearing shall be held upon any proposed revocation of a certificate of exemption upon the request of the holder thereof. The procedure governing hearings authorized by this subsection shall be in accordance with the Administrative Procedure Act. The decision to deny or revoke a certificate

of exemption may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1976, LB 91, § 10; Laws 1988, LB 352, § 136.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-4631 Licenses; issuance; denial, refusal of renewal, suspension, or revocation; civil penalty; grounds; notice; hearing; appeal.**

(1) The department shall issue licenses for the establishment, operation, and maintenance of mobile home parks which are found to comply with the Uniform Standard Code for Mobile Home Parks and such rules, regulations, and standards as are lawfully adopted and promulgated by the department pursuant thereto.

(2) The department shall deny, refuse renewal of, suspend, or revoke licenses or impose a civil penalty not to exceed two thousand dollars per day on any of the following grounds:

(a) Violation of any of the provisions of the code or the rules, regulations, and standards lawfully adopted and promulgated pursuant thereto;

(b) Permitting, aiding, or abetting the commission of any unlawful act; or

(c) Conduct or utility or sanitation practices detrimental to the health or safety of residents of a mobile home park.

(3) Should the department determine to deny, refuse renewal of, suspend, or revoke a license or impose a civil penalty, it shall send to the applicant or licensee, by either certified or registered mail, a notice setting forth the specific reasons for the determination.

(4) The denial, refusal of renewal, suspension, revocation, or imposition of a civil penalty shall become final thirty days after the mailing of the notice in all cases of failure to pay the required licensure fee if not paid by the end of such period, and in all other instances unless the applicant or licensee, within such thirty-day period, shall give written notice of a desire for a hearing. Thereupon the applicant or licensee shall be given opportunity for a formal hearing before the department and shall have the right to present evidence on his or her own behalf.

(5) The procedure governing hearings authorized by this section shall be in accordance with the Administrative Procedure Act. On the basis of the evidence presented, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the findings of facts and the specific reasons upon which it is based shall be sent by either certified or registered mail to the applicant or licensee. The applicant or licensee may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) The department shall remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1976, LB 91, § 11; Laws 1988, LB 352, § 137; Laws 2008, LB797, § 18.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-4632 Violations; nuisance; penalty; removal.**

Any person who establishes, conducts, operates, or maintains a mobile home park without first obtaining a license therefor from the department as provided in sections 71-4621 to 71-4634 shall be guilty of a Class IV misdemeanor and each day such mobile home park shall operate without a license after a first conviction shall be considered a separate offense. Such person shall also be guilty of maintaining a nuisance pursuant to section 28-1321, and upon conviction thereof, in addition to payment of the fine, such nuisance shall be removed.

**Source:** Laws 1976, LB 91, § 12; Laws 1977, LB 41, § 61; Laws 1978, LB 748, § 38.

**71-4633 Operation without license; action by department; burden of proof.**

The department may, in accordance with the laws governing injunctions and other process, maintain an action in the name of the state against any person for establishing, conducting, operating, or maintaining any mobile home park without first having a license therefor from the department as provided in sections 71-4621 to 71-4634. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, operate, or maintain a mobile home park without having a license to do so without averring any further or more particular facts concerning the same.

**Source:** Laws 1976, LB 91, § 13.

**71-4634 Act, how cited.**

Sections 71-4621 to 71-4634 shall be known and may be cited as the Uniform Standard Code for Mobile Home Parks.

**Source:** Laws 1976, LB 91, § 14.

**71-4635 Fire safety inspection; fee.**

The Department of Health and Human Services may request the State Fire Marshal to inspect for fire safety any mobile home park for which a license or renewal of a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 1983, LB 498, § 4; Laws 1996, LB 1044, § 680; Laws 2007, LB296, § 588.

**ARTICLE 47****HEARING****Cross References**

**Assistive Technology Regulation Act**, see section 69-2601.

**Hearing Instrument Specialists Practice Act**, see section 38-1501.

**Interpreters for hearing-impaired persons**, when required, see sections 20-150 to 20-159.

**Sales and use tax exemption**, see section 77-2704.09.

**Service animals:**

Access, see section 20-131.04.

Pet license tax, exemption, see section 54-603.

Vehicle driver, duties, see section 20-128.

Violence against, criminal penalty, see section 28-1009.01.

**Telecommunications Relay System Act**, see section 86-301.

## PUBLIC HEALTH AND WELFARE

Uniform Credentialing Act, see section 38-101.

### (a) HEARING AIDS

Section	
71-4701.	Transferred to section 38-1502.
71-4702.	Transferred to section 38-1509.
71-4702.01.	Repealed. Laws 2007, LB 463, § 1319.
71-4703.	Transferred to section 38-1511.
71-4704.	Transferred to section 38-1510.
71-4705.	Repealed. Laws 1986, LB 701, § 13.
71-4706.	Repealed. Laws 2007, LB 463, § 1319.
71-4707.	Transferred to section 38-1512.
71-4708.	Transferred to section 38-1513.
71-4709.	Transferred to section 38-1514.
71-4709.01.	Repealed. Laws 2007, LB 463, § 1319.
71-4710.	Repealed. Laws 2007, LB 463, § 1319.
71-4711.	Repealed. Laws 2007, LB 463, § 1319.
71-4712.	Transferred to section 38-1517.
71-4713.	Repealed. Laws 1988, LB 1100, § 185.
71-4714.	Repealed. Laws 2007, LB 463, § 1319.
71-4714.01.	Transferred to section 38-1518.
71-4715.	Transferred to section 38-1508.
71-4715.01.	Repealed. Laws 2007, LB 463, § 1319.
71-4716.	Repealed. Laws 2007, LB 463, § 1319.
71-4717.	Repealed. Laws 2007, LB 463, § 1319.
71-4718.	Repealed. Laws 2003, LB 242, § 154.
71-4719.	Repealed. Laws 2007, LB 463, § 1319.

### (b) COMMISSION FOR THE DEAF AND HARD OF HEARING

71-4720.	Commission for the Deaf and Hard of Hearing; created; members; appointment; qualifications.
71-4720.01.	Terms, defined.
71-4721.	Commission; members; terms.
71-4722.	Members; removal; grounds.
71-4723.	Members; expenses.
71-4724.	Commission; meetings; record; quorum.
71-4725.	Commission; officers; elect.
71-4726.	Commission; executive director; appoint.
71-4727.	Commission; employees.
71-4728.	Commission; purpose; duties.
71-4728.01.	Commission; mental health, alcoholism, and drug abuse services; service coordination.
71-4728.02.	Commission; mental health specialist advisor; duties.
71-4728.03.	Commission; special advisory committee; members.
71-4728.04.	Commission; telehealth system; powers and duties.
71-4728.05.	Interpreter Review Board; members; duties; expenses.
71-4729.	Commission; cooperate with state agencies.
71-4730.	Commission; agreements; contracts; enter into.
71-4731.	Governor; gifts, grants, and donations; accept.
71-4732.	Commission for the Deaf and Hard of Hearing Fund; created; use; investment.
71-4732.01.	Telehealth System Fund; created; use; investment.
71-4733.	Repealed. Laws 2000, LB 352, § 24.

### (c) INFANT HEARING ACT

71-4734.	Act, how cited.
71-4735.	Legislative findings and purpose.
71-4736.	Terms, defined.
71-4737.	Hearing loss; tracking system.
71-4738.	Federal funding.
71-4739.	Birth facility; confirmatory testing facility; reports required.
71-4740.	Hearing loss; educational information.

Section	
71-4741.	Hearing screening; department; duties.
71-4742.	Hearing screening test; newborn; standard of care.
71-4743.	Referral guidelines.
71-4744.	Rules and regulations.

## (a) HEARING AIDS

**71-4701 Transferred to section 38-1502.**

**71-4702 Transferred to section 38-1509.**

**71-4702.01 Repealed. Laws 2007, LB 463, § 1319.**

**71-4703 Transferred to section 38-1511.**

**71-4704 Transferred to section 38-1510.**

**71-4705 Repealed. Laws 1986, LB 701, § 13.**

**71-4706 Repealed. Laws 2007, LB 463, § 1319.**

**71-4707 Transferred to section 38-1512.**

**71-4708 Transferred to section 38-1513.**

**71-4709 Transferred to section 38-1514.**

**71-4709.01 Repealed. Laws 2007, LB 463, § 1319.**

**71-4710 Repealed. Laws 2007, LB 463, § 1319.**

**71-4711 Repealed. Laws 2007, LB 463, § 1319.**

**71-4712 Transferred to section 38-1517.**

**71-4713 Repealed. Laws 1988, LB 1100, § 185.**

**71-4714 Repealed. Laws 2007, LB 463, § 1319.**

**71-4714.01 Transferred to section 38-1518.**

**71-4715 Transferred to section 38-1508.**

**71-4715.01 Repealed. Laws 2007, LB 463, § 1319.**

**71-4716 Repealed. Laws 2007, LB 463, § 1319.**

**71-4717 Repealed. Laws 2007, LB 463, § 1319.**

**71-4718 Repealed. Laws 2003, LB 242, § 154.**

**71-4719 Repealed. Laws 2007, LB 463, § 1319.**

## (b) COMMISSION FOR THE DEAF AND HARD OF HEARING

**71-4720 Commission for the Deaf and Hard of Hearing; created; members; appointment; qualifications.**

There is hereby created the Commission for the Deaf and Hard of Hearing which shall consist of nine members to be appointed by the Governor subject to

approval by the Legislature. The commission members shall include three deaf persons, three hard of hearing persons, and three persons who have an interest in and knowledge of deafness and hearing loss issues. A majority of the commission members who are deaf or hard of hearing shall be able to express themselves through sign language. Employees of any state agency other than employees of the commission shall be eligible to serve on the commission. When appointing members to the commission, the Governor shall consider recommendations from individuals, organizations, and the public.

On September 13, 1997, all personnel, furniture, equipment, books, files, records, and other property of the Commission for the Hearing Impaired shall be transferred to the Commission for the Deaf and Hard of Hearing.

**Source:** Laws 1979, LB 101, § 1; Laws 1981, LB 250, § 1; Laws 1987, LB 376, § 16; Laws 1995, LB 25, § 1; Laws 1997, LB 851, § 12.

#### **71-4720.01 Terms, defined.**

For purposes of sections 71-4720 to 71-4732.01:

- (1) Commission means Commission for the Deaf and Hard of Hearing;
- (2) Deaf means a hearing impairment, with or without amplification, which is so severe that the person with the impairment may have difficulty in auditorily processing spoken language without the use of an interpreter;
- (3) Hard of hearing means a hearing loss, permanent or fluctuating, which may adversely affect the ability to understand spoken language without the use of an interpreter or auxiliary aid; and
- (4) Licensed interpreter has the same meaning as in section 20-151.

**Source:** Laws 1997, LB 851, § 13; Laws 2000, LB 352, § 17; Laws 2001, LB 334, § 3; Laws 2002, LB 22, § 14.

#### **71-4721 Commission; members; terms.**

Members of the commission shall serve for terms of three years and may not serve more than two consecutive three-year terms. A former member who has served two consecutive terms may be reappointed to the commission after at least one year of nonservice. The terms of the members shall expire on January 31 of the final year of their appointed term. As the terms of the appointees expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to three-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed.

**Source:** Laws 1979, LB 101, § 2; Laws 1987, LB 376, § 17; Laws 1997, LB 851, § 14.

#### **71-4722 Members; removal; grounds.**

Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording such member an opportunity to be publicly heard in

person, or by counsel, in his or her own defense, upon not less than ten days' notice.

**Source:** Laws 1979, LB 101, § 3.

**71-4723 Members; expenses.**

The members of the commission shall receive no compensation for their services as such but shall be reimbursed for their actual and necessary expenses in attending meetings of the commission and in carrying out their official duties as provided in sections 81-1174 to 81-1177, for state employees.

**Source:** Laws 1979, LB 101, § 4; Laws 1981, LB 204, § 131.

**71-4724 Commission; meetings; record; quorum.**

The commission shall hold at least four meetings a year, at a time and place decided by the commission, and shall keep a record of its proceedings, which shall be open to the public for inspection. The commission shall adopt and promulgate rules and regulations for the holding of special meetings. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the commission by the secretary. Six members of the commission shall constitute a quorum.

**Source:** Laws 1979, LB 101, § 5; Laws 1981, LB 250, § 2; Laws 1987, LB 376, § 18; Laws 1997, LB 851, § 15.

**71-4725 Commission; officers; elect.**

The commission shall annually elect from its members a chairperson, vice-chairperson, and secretary. At least one officer shall be a deaf or hard of hearing person. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson.

**Source:** Laws 1979, LB 101, § 6; Laws 1981, LB 250, § 3; Laws 1987, LB 376, § 19; Laws 1997, LB 851, § 16.

**71-4726 Commission; executive director; appoint.**

The commission shall appoint a qualified person to serve as executive director who shall serve with the advice and consent of the commission. When appointing an executive director preference may be given to a deaf or hard of hearing person.

**Source:** Laws 1979, LB 101, § 7; Laws 1981, LB 250, § 4; Laws 1997, LB 851, § 17.

**71-4727 Commission; employees.**

The commission may employ any employees, including interpreters, it considers necessary to carry out the purposes of sections 71-4720 to 71-4732.01.

**Source:** Laws 1979, LB 101, § 8; Laws 1995, LB 25, § 2; Laws 1999, LB 359, § 1; Laws 2001, LB 334, § 4; Laws 2002, LB 22, § 15.

**71-4728 Commission; purpose; duties.**

The commission shall serve as the principal state agency responsible for monitoring public policies and implementing programs which shall improve the quality and coordination of existing services for deaf or hard of hearing

persons and promote the development of new services when necessary. To perform this function the commission shall:

(1) Inventory services available for meeting the problems of persons with a hearing loss and assist such persons in locating and securing such services;

(2) License interpreters and video remote interpreting providers under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters as defined in section 20-151. The roster shall include the type of employment the interpreter generally engages in, the type of license held, and the expiration date of the license. Each interpreter included on the roster shall provide the commission with his or her social security number which shall be kept confidential by the commission. The roster shall be made available to local, state, and federal agencies and shall be used for referrals to private organizations and individuals seeking interpreters and video remote interpreting providers;

(3) Promote the training of interpreters and video remote interpreting providers for deaf or hard of hearing persons;

(4) Provide counseling to deaf or hard of hearing persons or refer such persons to private or governmental agencies which provide counseling services;

(5) Conduct a voluntary census of deaf or hard of hearing persons in Nebraska and compile a current registry;

(6) Promote expanded adult educational opportunities for deaf or hard of hearing persons;

(7) Serve as an agency for the collection of information concerning deaf or hard of hearing persons and for the dispensing of such information to interested persons by collecting studies, compiling bibliographies, gathering information, and conducting research with respect to the education, training, counseling, placement, and social and economic adjustment of deaf or hard of hearing persons and with respect to the causes, diagnosis, treatment, and methods of prevention of impaired hearing;

(8) Appoint advisory or special committees when appropriate for indepth investigations and study of particular problems and receive reports of findings and recommendations;

(9) Assess and monitor programs for services to deaf or hard of hearing persons and make recommendations to those state agencies providing such services regarding changes necessary to improve the quality and coordination of the services;

(10) Make recommendations to the Governor and the Legislature with respect to modification in existing services or establishment of additional services for deaf or hard of hearing persons. The recommendations submitted to the Legislature shall be submitted electronically;

(11) Promote awareness and understanding of the rights of deaf or hard of hearing persons;

(12) Promote statewide communication services for deaf or hard of hearing persons;

(13) Assist deaf or hard of hearing persons in accessing comprehensive mental health, alcoholism, and drug abuse services;



(14) Provide licensed interpreters in public and private settings for the benefit of deaf or hard of hearing persons, if private-practice licensed interpreters are not available, and establish and collect reasonable fees for such services; and

(15) Approve, conduct, and sponsor continuing education programs and other activities to assess continuing competence of licensees. The commission shall establish and charge reasonable fees for such activities. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

**Source:** Laws 1979, LB 101, § 9; Laws 1981, LB 250, § 5; Laws 1987, LB 376, § 20; Laws 1995, LB 25, § 3; Laws 1997, LB 851, § 18; Laws 1999, LB 359, § 2; Laws 2002, LB 22, § 16; Laws 2006, LB 87, § 4; Laws 2012, LB782, § 117; Laws 2015, LB287, § 6.

**Cross References**

Telecommunications Relay System Act, see section 86-301.

**71-4728.01 Commission; mental health, alcoholism, and drug abuse services; service coordination.**

The commission shall not deliver direct mental health, alcoholism, and drug abuse services but shall assist in obtaining full access to comprehensive mental health, alcoholism, and drug abuse services for deaf or hard of hearing persons by providing service coordination for deaf or hard of hearing persons with mental health, alcoholism, and drug abuse disorders including:

(1) Meeting the communication needs of deaf or hard of hearing persons including interpreter services and auxiliary aids;

(2) Education and training for persons who provide treatment for mental health, alcoholism, and drug abuse disorders to deaf or hard of hearing persons; and

(3) Placement of assistive-listening devices for deaf or hard of hearing persons in mental health, alcoholism, and drug abuse treatment facilities.

**Source:** Laws 1995, LB 25, § 4; Laws 1997, LB 851, § 19.

**71-4728.02 Commission; mental health specialist advisor; duties.**

The commission shall appoint a mental health specialist advisor. The specialist shall monitor and provide advice to mental health, alcoholism, and drug abuse programs which provide treatment for deaf or hard of hearing persons. The specialist shall also serve as the commission's liaison to persons who provide treatment or intervention services for mental health, alcoholism, and drug abuse disorders which provide treatment for deaf or hard of hearing persons.

**Source:** Laws 1995, LB 25, § 5; Laws 1997, LB 851, § 20.

**71-4728.03 Commission; special advisory committee; members.**

The commission shall implement section 71-4728.02 with the advice of a special advisory committee appointed by the commission. The committee shall consist of five members as follows: Three counselors familiar with mental health, alcoholism, and drug abuse disorders in deaf or hard of hearing persons and two human services professionals. The Department of Health and Human

Services and the commission shall each have a representative who serves on the committee in a nonvoting technical capacity.

**Source:** Laws 1995, LB 25, § 6; Laws 1996, LB 1044, § 682; Laws 1997, LB 851, § 21.

**71-4728.04 Commission; telehealth system; powers and duties.**

(1) The commission may establish a telehealth system to provide access for deaf and hard of hearing persons in remote locations to mental health, alcoholism, and drug abuse services. The telehealth system may (a) provide access for deaf or hard of hearing persons to counselors who communicate in sign language and are knowledgeable in deafness and hearing loss issues, (b) promote access for hard of hearing persons through contacts with counselors in which hard of hearing persons receive both visual cues, or reading lips, and auditory cues, (c) offer remote interpreter services for deaf or hard of hearing persons to interact with counselors who are not fluent in sign language, and (d) promote participation in educational programs.

(2) The commission shall set and charge a fee between the range of twenty and one hundred fifty dollars per hour for the use of the telehealth system. The commission shall remit all fees collected pursuant to this section to the State Treasurer for credit to the Telehealth System Fund.

(3) For purposes of this section, telehealth has the same meaning as in section 71-8503.

**Source:** Laws 2001, LB 334, § 1; Laws 2002, Second Spec. Sess., LB 49, § 1.

**71-4728.05 Interpreter Review Board; members; duties; expenses.**

(1) The commission shall appoint the Interpreter Review Board as required in section 20-156.

(2) Members of the Interpreter Review Board shall be as follows:

(a) A representative of the Department of Health and Human Services and the executive director of the commission or his or her designee, both of whom shall serve continuously and without limitation;

(b) One qualified interpreter, appointed for a term to expire on June 30, 2008;

(c) One representative of local government, appointed for a term to expire on June 30, 2008;

(d) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2009;

(e) One qualified interpreter, appointed for a term to expire on June 30, 2009;

(f) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2010; and

(g) One representative of local government, appointed for a term to expire on June 30, 2010.

(3) Upon the expiration of the terms described in subsection (2) of this section, members other than those identified in subdivision (2)(a) of this section shall be appointed for terms of three years. No such member may serve more than two consecutive three-year terms beginning June 30, 2007, except that

members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The commission may remove a member of the board for inefficiency, neglect of duty, or misconduct in office after delivering to such member a copy of the charges and a public hearing in accordance with the Administrative Procedure Act. If a vacancy occurs on the board, the commission shall appoint another member with the same qualifications as the vacating member to serve the remainder of the term. The members of the board shall receive no compensation but shall be reimbursed for their actual and necessary expenses, as provided in sections 81-1174 to 81-1177, in attending meetings of the commission and in carrying out their official duties as provided in this section and section 20-156.

(5) The board shall establish policies, standards, and procedures for evaluating and licensing interpreters, including, but not limited to, testing, training, issuance, renewal, and denial of licenses, continuing education and continuing competency assessment, investigation of complaints, and disciplinary actions against a license pursuant to section 20-156.

**Source:** Laws 2002, LB 22, § 17; Laws 2006, LB 87, § 5; Laws 2007, LB296, § 590.

#### Cross References

Administrative Procedure Act, see section 84-920.

#### **71-4729 Commission; cooperate with state agencies.**

The commission shall in fulfilling its responsibilities enumerated in section 71-4728 cooperate with any state agency having authority related to the problems of deaf or hard of hearing persons. Such agencies shall also cooperate with the commission. Avoidance of unnecessary duplication of state-delivered services to deaf or hard of hearing persons shall be a primary objective of such cooperation.

**Source:** Laws 1979, LB 101, § 10; Laws 1981, LB 250, § 6; Laws 1995, LB 25, § 7; Laws 1997, LB 851, § 22.

#### **71-4730 Commission; agreements; contracts; enter into.**

The commission may make agreements with other state agencies and may contract with other individuals, organizations, corporations, associations, or other legal entities including private agencies or any department or agency of the federal government or the state or any political subdivision thereof, to carry out the functions and purposes of the commission.

**Source:** Laws 1979, LB 101, § 11.

#### **71-4731 Governor; gifts, grants, and donations; accept.**

The Governor may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving services to deaf or hard of hearing persons of this state.

**Source:** Laws 1979, LB 101, § 12; Laws 1997, LB 851, § 23.

#### **71-4732 Commission for the Deaf and Hard of Hearing Fund; created; use; investment.**

There is hereby created a Commission for the Deaf and Hard of Hearing Fund to consist of such funds as the Legislature shall appropriate, any funds received under sections 20-156 and 71-4731, and any fees collected for interpreter services as provided in section 71-4728. The fund shall be used to administer sections 20-156 and 71-4720 to 71-4732.01, except that (1) money in the fund from fees collected for interpreter services shall be used only for expenses related to the provision of such services, (2) money in the fund may only be used to provide services pursuant to section 71-4728.04 if there is no money in the Telehealth System Fund, and (3) transfers may be made from the Commission for the Deaf and Hard of Hearing Fund to the General Fund at the direction of the Legislature. Any money in the Commission for the Deaf and Hard of Hearing 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 1979, LB 101, § 13; Laws 1995, LB 7, § 78; Laws 1995, LB 25, § 8; Laws 1997, LB 851, § 24; Laws 1999, LB 359, § 3; Laws 2001, LB 334, § 5; Laws 2002, LB 22, § 18; Laws 2009, First Spec. Sess., LB3, § 45.

**Cross References**

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

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

**71-4732.01 Telehealth System Fund; created; use; investment.**

The Telehealth System Fund is created. The fund shall be used for any expenses related to the operation and maintenance of the telehealth system established in section 71-4728.04. 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 2001, LB 334, § 2.

**Cross References**

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

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

**71-4733 Repealed. Laws 2000, LB 352, § 24.**

(c) INFANT HEARING ACT

**71-4734 Act, how cited.**

Sections 71-4734 to 71-4744 shall be known and may be cited as the Infant Hearing Act.

**Source:** Laws 2000, LB 950, § 1.

**71-4735 Legislative findings and purpose.**

(1) The Legislature finds that:

(a) Hearing loss occurs in newborns more frequently than any other health condition for which newborn screening is required;

(b) Early detection of hearing loss in a child and early intervention and treatment before six months of age has been demonstrated to be highly effective in facilitating a child's language, communication, and educational development;

(c) Children of all ages can receive reliable and valid screening for hearing loss in a cost-effective manner; and

(d) Appropriate screening and identification of newborns and infants with hearing loss will facilitate early intervention and treatment in the critical time period for language development and may serve the public purposes of promoting the healthy development of children and reducing public expenditure for health care, special education, and related services.

(2) The purpose of the Infant Hearing Act is:

(a) To provide early detection of hearing loss in newborns at the birthing facility, or as soon after birth as possible for those children born outside of a birthing facility, to enable these children and their families and other caregivers to obtain needed multidisciplinary evaluation, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late detection of hearing loss; and

(b) To provide the state with the information necessary to effectively plan, establish, and evaluate a comprehensive system for the identification of newborns and infants who have a hearing loss.

**Source:** Laws 2000, LB 950, § 2.

**71-4736 Terms, defined.**

For purposes of the Infant Hearing Act:

(1) Birth admission means the time after birth that the newborn remains in the hospital or other health care facility prior to discharge;

(2) Birthing facility means a hospital or other health care facility in this state which provides birthing and newborn care services;

(3) Confirmatory testing facility means a hospital or other health care facility in this state which provides followup hearing tests;

(4) Infant means a child from thirty days through twelve months old;

(5) Newborn means a child from birth through twenty-nine days old; and

(6) Parent means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

**Source:** Laws 2000, LB 950, § 3.

**71-4737 Hearing loss; tracking system.**

The Legislature recognizes that it is necessary to track newborns and infants identified with a potential hearing loss or who have been evaluated and have been found to have a hearing loss for a period of time in order to render appropriate followup care. The Department of Health and Human Services shall determine and implement the most appropriate system for this state which is available to track newborns and infants identified with a hearing loss. It is the intent of the Legislature that the tracking system provide the department and Legislature with the information necessary to effectively plan and establish a comprehensive system of developmentally appropriate services for newborns and infants who have a potential hearing loss or who have been found to have a

hearing loss and shall reduce the likelihood of associated disabling conditions for such newborns and infants.

**Source:** Laws 2000, LB 950, § 4; Laws 2005, LB 301, § 44; Laws 2007, LB296, § 591.

**71-4738 Federal funding.**

The Department of Health and Human Services shall apply for all available federal funding to implement the Infant Hearing Act.

**Source:** Laws 2000, LB 950, § 5; Laws 2005, LB 301, § 45; Laws 2007, LB296, § 592.

**71-4739 Birthing facility; confirmatory testing facility; reports required.**

(1) Every birthing facility shall annually report to the Department of Health and Human Services the number of:

- (a) Newborns born;
- (b) Newborns and infants recommended for a hearing screening test;
- (c) Newborns who received a hearing screening test during birth admission;
- (d) Newborns who passed a hearing screening test during birth admission if administered;
- (e) Newborns who did not pass a hearing screening test during birth admission if administered; and

(f) Newborns recommended for monitoring, intervention, and followup care.

(2) Every confirmatory testing facility shall annually report to the Department of Health and Human Services the number of:

- (a) Newborns and infants who return for a followup hearing test;
- (b) Newborns and infants who do not have a hearing loss based upon the followup hearing test; and
- (c) Newborns and infants who are shown to have a hearing loss based upon the followup hearing test.

**Source:** Laws 2000, LB 950, § 6; Laws 2005, LB 301, § 46; Laws 2007, LB296, § 593.

**71-4740 Hearing loss; educational information.**

(1) Every birthing facility shall educate the parents of newborns born in such facilities of the importance of receiving a hearing screening test and any necessary followup care. This educational information shall explain, in lay terms, the hearing screening test, the likelihood of the newborn having a hearing loss, followup procedures, and community resources, including referral for early intervention services under the Early Intervention Act. The educational information shall also include a description of the normal auditory, speech, and language developmental process in children. Education shall not be considered a substitute for the hearing screening test.

(2) If a newborn is not born in a birthing facility, the Department of Health and Human Services shall educate the parents of such newborns of the importance of receiving a hearing screening test and any necessary followup care. The department shall also give parents information to assist them in

having the test performed within three months after the date of the child's birth.

**Source:** Laws 2000, LB 950, § 7; Laws 2005, LB 301, § 47; Laws 2007, LB296, § 594.

**Cross References**

**Early Intervention Act**, see section 43-2501.

**71-4741 Hearing screening; department; duties.**

(1) The Department of Health and Human Services shall determine which birthing facilities are administering hearing screening tests to newborns and infants on a voluntary basis and the number of newborns and infants screened. The department shall submit electronically an annual report to the Legislature stating the number of:

(a) Birthing facilities administering voluntary hearing screening tests during birth admission;

(b) Newborns screened as compared to the total number of newborns born in such facilities;

(c) Newborns who passed a hearing screening test during birth admission if administered;

(d) Newborns who did not pass a hearing screening test during birth admission if administered; and

(e) Newborns recommended for followup care.

(2) The Department of Health and Human Services, in consultation with the State Department of Education, birthing facilities, and other providers, shall develop approved screening methods and protocol for statewide hearing screening tests of substantially all newborns and infants.

(3) Subject to available appropriations, the Department of Health and Human Services shall make the report described in this section available.

**Source:** Laws 2000, LB 950, § 8; Laws 2005, LB 301, § 48; Laws 2007, LB296, § 595; Laws 2012, LB782, § 118.

**71-4742 Hearing screening test; newborn; standard of care.**

(1) Each birthing facility shall include a hearing screening test as part of its standard of care for newborns and shall establish a mechanism for compliance review. A hearing screening test shall be conducted on no fewer than ninety-five percent of the newborns born in this state.

(2) If the number of newborns receiving a hearing screening test does not equal or exceed ninety-five percent of the total number of newborns born in this state on or before December 1, 2003, or falls below ninety-five percent at any time thereafter, the Department of Health and Human Services shall immediately adopt and promulgate rules and regulations implementing a hearing screening program. The hearing screening program shall provide for a hearing screening test that every newborn born in this state shall undergo and shall provide that the hearing screening test be completed during birth admission or, if that is not possible, no later than three months after birth. Notwithstanding

this section, it is the goal of this state to achieve a one-hundred-percent screening rate.

**Source:** Laws 2000, LB 950, § 9; Laws 2005, LB 301, § 49; Laws 2007, LB296, § 596.

#### **71-4743 Referral guidelines.**

The Department of Health and Human Services and the State Department of Education shall establish guidelines for when a referral shall be made for early intervention services under the Early Intervention Act. The guidelines shall include a request for an individual evaluation of a child suspected of being deaf or hard of hearing as defined in section 79-1118.01.

**Source:** Laws 2000, LB 950, § 10; Laws 2005, LB 301, § 50; Laws 2007, LB296, § 597.

#### **Cross References**

**Early Intervention Act**, see section 43-2501.

#### **71-4744 Rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Infant Hearing Act.

**Source:** Laws 2000, LB 950, § 11; Laws 2005, LB 301, § 51; Laws 2007, LB296, § 598.

## **ARTICLE 48**

### **ANATOMICAL GIFTS**

#### **Cross References**

**Coroner**, duties, see sections 23-1825 to 23-1832.

**Transactions relating to blood and human tissue**, see sections 71-4001 and 71-4002.

#### **(a) UNIFORM ANATOMICAL GIFT ACT**

##### **Section**

- 71-4801. Repealed. Laws 2010, LB 1036, § 42.
- 71-4802. Repealed. Laws 2010, LB 1036, § 42.
- 71-4803. Repealed. Laws 2010, LB 1036, § 42.
- 71-4804. Repealed. Laws 2010, LB 1036, § 42.
- 71-4805. Repealed. Laws 2010, LB 1036, § 42.
- 71-4806. Repealed. Laws 2010, LB 1036, § 42.
- 71-4807. Repealed. Laws 2010, LB 1036, § 42.
- 71-4808. Blood; who may consent to donate.
- 71-4809. Repealed. Laws 2010, LB 1036, § 42.
- 71-4810. Repealed. Laws 2010, LB 1036, § 42.
- 71-4811. Repealed. Laws 2010, LB 1036, § 42.
- 71-4812. Repealed. Laws 2010, LB 1036, § 42.

#### **(b) MISCELLANEOUS PROVISIONS**

- 71-4813. Eye tissue; pituitary gland; removal; when authorized.
- 71-4814. Organ and tissue donations; legislative findings; protocol; development.
- 71-4815. Repealed. Laws 2010, LB 1036, § 42.
- 71-4816. Certificate of death; attestation required; statistical information.
- 71-4817. Repealed. Laws 2010, LB 1036, § 42.
- 71-4818. Repealed. Laws 2010, LB 1036, § 42.

#### **(c) BONE MARROW DONATIONS**

- 71-4819. Department of Health and Human Services; education regarding bone marrow donors; powers and duties.



## Section

- 71-4820. Employer; grant of leaves of absence; encouraged.  
 71-4821. Repealed. Laws 1996, LB 1044, § 985.

## (d) DONOR REGISTRY OF NEBRASKA

- 71-4822. Donor Registry of Nebraska; establishment; duties; restriction on information.  
 71-4823. Repealed. Laws 2009, LB 154, § 27.

## (e) REVISED UNIFORM ANATOMICAL GIFT ACT

- 71-4824. Act, how cited.  
 71-4825. Terms, defined.  
 71-4826. Applicability of act.  
 71-4827. Who may make anatomical gift before donor's death.  
 71-4828. Manner of making anatomical gift before donor's death.  
 71-4829. Amending or revoking anatomical gift before donor's death.  
 71-4830. Refusal to make anatomical gift; effect of refusal.  
 71-4831. Preclusive effect of anatomical gift, amendment, or revocation.  
 71-4832. Who may make anatomical gift of decedent's body or part.  
 71-4833. Manner of making, amending, or revoking anatomical gift of decedent's body or part.  
 71-4834. Persons that may receive anatomical gift; purpose of anatomical gift.  
 71-4835. Search and notification.  
 71-4836. Delivery of document of gift not required; right to examine.  
 71-4837. Rights and duties of procurement organization and others.  
 71-4838. Coordination of procurement and use.  
 71-4839. Sale or purchase of parts prohibited; penalty.  
 71-4840. Other prohibited acts; penalty.  
 71-4841. Immunity.  
 71-4842. Law governing validity; choice of law as to execution of document of gift; presumption of validity.  
 71-4843. Effect of anatomical gift on advance health care directive.  
 71-4844. Uniformity of application and construction.  
 71-4845. Relation to Electronic Signatures in Global and National Commerce Act.

## (a) UNIFORM ANATOMICAL GIFT ACT

**71-4801 Repealed. Laws 2010, LB 1036, § 42.**

**71-4802 Repealed. Laws 2010, LB 1036, § 42.**

**71-4803 Repealed. Laws 2010, LB 1036, § 42.**

**71-4804 Repealed. Laws 2010, LB 1036, § 42.**

**71-4805 Repealed. Laws 2010, LB 1036, § 42.**

**71-4806 Repealed. Laws 2010, LB 1036, § 42.**

**71-4807 Repealed. Laws 2010, LB 1036, § 42.**

**71-4808 Blood; who may consent to donate.**

Any individual of sound mind and seventeen years of age or more may consent to donate whole blood for the purpose of injecting, transfusing, or transplanting such blood in the human body. No person seventeen or eighteen years of age shall receive compensation for any donation of whole blood without parental permission or authorization.

**Source:** Laws 1971, LB 799, § 8; Laws 1972, LB 1086, § 3; Laws 1977, LB 49, § 1; Laws 1992, LB 1178, § 9.

**71-4809 Repealed. Laws 2010, LB 1036, § 42.**

**71-4810 Repealed. Laws 2010, LB 1036, § 42.**

**71-4811 Repealed. Laws 2010, LB 1036, § 42.**

**71-4812 Repealed. Laws 2010, LB 1036, § 42.**

(b) MISCELLANEOUS PROVISIONS

**71-4813 Eye tissue; pituitary gland; removal; when authorized.**

(1) When an autopsy is performed by the physician authorized by the county coroner to perform such autopsy, the physician or an appropriately qualified designee with training in ophthalmologic techniques, as provided for in subsection (2) of this section, may remove eye tissue of the decedent for the purpose of transplantation. The physician may also remove the pituitary gland for the purpose of research and treatment of hypopituitary dwarfism and of other growth disorders. Removal of the eye tissue or the pituitary gland shall only take place if the:

(a) Autopsy was authorized by the county coroner;

(b) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 30-2223; and

(c) Removal of eye tissue or of the pituitary gland will not interfere with the course of any subsequent investigation or alter the decedent's post mortem facial appearance.

(2) An appropriately qualified designee of a physician with training in ophthalmologic techniques or a funeral director and embalmer licensed pursuant to the Funeral Directing and Embalming Practice Act upon (a) successfully completing a course in eye enucleation and (b) receiving a certificate of competence from the Department of Ophthalmology of the University of Nebraska Medical Center may enucleate the eyes of the donor.

(3) The removed eye tissue or pituitary gland shall be transported to the Department of Health and Human Services or any desired institution or health facility as prescribed by section 38-1427.

**Source:** Laws 1983, LB 60, § 1; Laws 1985, LB 130, § 2; Laws 1996, LB 1044, § 683; Laws 2007, LB296, § 599; Laws 2007, LB463, § 1220; Laws 2010, LB1036, § 36; Laws 2014, LB998, § 17.

**Cross References**

**Funeral Directing and Embalming Practice Act**, see section 38-1401.

**71-4814 Organ and tissue donations; legislative findings; protocol; development.**

The Legislature finds that the availability of donor organs and tissue can save the lives and restore the health and productivity of many Nebraskans. Every hospital in the state shall develop a protocol, appropriate to the hospital's capability, for identifying and referring potential donor organ and tissue availability in coordination with the Revised Uniform Anatomical Gift Act. The protocol shall require utmost care and sensitivity to the family's circumstances, views, and beliefs in all discussions regarding donation of organs or tissue. Hospitals shall be required to consult with existing organ and tissue agencies

preparatory to establishing a staff training and education program in the protocol. This section and section 71-4816 are for the immediate preservation of the public health and welfare.

**Source:** Laws 1987, LB 74, § 1; Laws 2010, LB1036, § 37.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

**71-4815 Repealed. Laws 2010, LB 1036, § 42.**

**71-4816 Certificate of death; attestation required; statistical information.**

(1) The physician responsible for the completion and signing of the portion of the certificate of death entitled medical certificate of death or, if there is no such physician, the person responsible for signing the certificate of death shall attest on the death certificate whether organ or tissue donation was considered and whether consent was granted under the protocol of the hospital.

(2) The Department of Health and Human Services shall make available the number of organ and tissue donors in Nebraska for statistical purposes.

**Source:** Laws 1987, LB 74, § 3; Laws 1996, LB 1044, § 684; Laws 2007, LB296, § 600; Laws 2010, LB1036, § 38.

**71-4817 Repealed. Laws 2010, LB 1036, § 42.**

**71-4818 Repealed. Laws 2010, LB 1036, § 42.**

(c) BONE MARROW DONATIONS

**71-4819 Department of Health and Human Services; education regarding bone marrow donors; powers and duties.**

(1) The Department of Health and Human Services shall educate residents of the state about:

- (a) The need for bone marrow donors;
- (b) The procedures required to become registered as a potential bone marrow donor, including the procedures for determining tissue type; and
- (c) The medical procedures a donor must undergo to donate bone marrow and the attendant risks of the procedures.

(2) The department shall make special efforts to educate and recruit persons of racial and ethnic minorities to volunteer as potential bone marrow donors.

(3) The department may use the press, radio, and television and may place educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department, in conjunction with the Director of Motor Vehicles, shall make educational materials available at all places where motor vehicle operators' licenses are issued or renewed.

**Source:** Laws 1992, LB 1099, § 1; Laws 1996, LB 1044, § 685; Laws 2007, LB296, § 601.

**71-4820 Employer; grant of leaves of absence; encouraged.**

An employer shall be encouraged to grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow.

**Source:** Laws 1992, LB 1099, § 2.

**71-4821 Repealed. Laws 1996, LB 1044, § 985.**

## (d) DONOR REGISTRY OF NEBRASKA

**71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.**

(1) The federally designated organ procurement organization for Nebraska shall use the information received from the Department of Motor Vehicles under section 60-494 to establish and maintain the Donor Registry of Nebraska. A procurement organization located outside of Nebraska may obtain information from the Donor Registry of Nebraska when a Nebraska resident is listed as a donor on the registry and is not located in Nebraska immediately preceding or at the time of his or her death. The federally designated organ procurement organization for Nebraska may receive donor information from sources other than the Department of Motor Vehicles and shall pay all costs associated with creating and maintaining the Donor Registry of Nebraska.

(2) It is the intent of the Legislature that the Donor Registry of Nebraska facilitate organ and tissue donations and not inhibit such donations. A person does not need to be listed on the Donor Registry of Nebraska to be an organ and tissue donor.

(3) No person shall obtain information from the Donor Registry of Nebraska for the purpose of fundraising or other commercial use. Information obtained from the Donor Registry of Nebraska may only be used to facilitate the donation process at the time of the donor's death. General statistical information may be provided upon request to the federally designated organ procurement organization for Nebraska.

**Source:** Laws 2004, LB 559, § 7; Laws 2010, LB1036, § 39.

**71-4823 Repealed. Laws 2009, LB 154, § 27.**

## (e) REVISED UNIFORM ANATOMICAL GIFT ACT

**71-4824 Act, how cited.**

Sections 71-4824 to 71-4845 shall be known and may be cited as the Revised Uniform Anatomical Gift Act.

**Source:** Laws 2010, LB1036, § 1.

**71-4825 Terms, defined.**

For purposes of the Revised Uniform Anatomical Gift Act:

- (1) Adult means an individual who is at least eighteen years of age;
- (2) Agent means an individual:
  - (A) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or
  - (B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;
- (3) Anatomical gift means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;

(4) Decedent means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than the Revised Uniform Anatomical Gift Act, a fetus. The term decedent does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion;

(5) Disinterested witness means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 71-4834;

(6) Document of gift means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry;

(7) Donor means an individual whose body or part is the subject of an anatomical gift;

(8) Donor registry means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;

(9) Driver's license means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit;

(10) Eye bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;

(11) Guardian means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;

(12) Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

(13) Identification card means a state identification card issued by the Department of Motor Vehicles;

(14) Know means to have actual knowledge;

(15) Minor means an individual who is under eighteen years of age;

(16) Organ procurement organization means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization;

(17) Parent means a parent whose parental rights have not been terminated;

(18) Part means an organ, an eye, or tissue of a human being. The term does not include the whole body;

(19) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(20) Physician means an individual authorized to practice medicine or osteopathy under the law of any state;

(21) Procurement organization means an eye bank, organ procurement organization, or tissue bank;

(22) Prospective donor means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;

(23) Reasonably available means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;

(24) Recipient means an individual into whose body a decedent's part has been or is intended to be transplanted;

(25) 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;

(26) Refusal means a record created under section 71-4830 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;

(27) Sign means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(28) 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;

(29) Technician means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator;

(30) Tissue means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education;

(31) Tissue bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and

(32) Transplant hospital means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

**Source:** Laws 2010, LB1036, § 2.

#### **71-4826 Applicability of act.**

The Revised Uniform Anatomical Gift Act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

**Source:** Laws 2010, LB1036, § 3.

#### **71-4827 Who may make anatomical gift before donor's death.**

Subject to section 71-4831, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 71-4828 by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
  - (A) Emancipated; or
  - (B) Authorized under state law to apply for a driver's license and the donor is at least sixteen years of age;
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian.

**Source:** Laws 2010, LB1036, § 4.

**71-4828 Manner of making anatomical gift before donor's death.**

- (a) A donor may make an anatomical gift:
  - (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
  - (2) In a will;
  - (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
  - (4) As provided in subsection (b) of this section.
- (b) A donor or other person authorized to make an anatomical gift under section 71-4827 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:
  - (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
  - (2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.
- (c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- (d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

**Source:** Laws 2010, LB1036, § 5.

**71-4829 Amending or revoking anatomical gift before donor's death.**

- (a) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

**Source:** Laws 2010, LB1036, § 6.

**71-4830 Refusal to make anatomical gift; effect of refusal.**

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;



(2) By subsequently making an anatomical gift pursuant to section 71-4828 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subsection (h) of section 71-4831, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

**Source:** Laws 2010, LB1036, § 7.

**71-4831 Preclusive effect of anatomical gift, amendment, or revocation.**

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 71-4829 is not a refusal and does not bar another person specified in section 71-4827 or 71-4832 from making an anatomical gift of the donor's body or part under section 71-4828 or 71-4833.

(c) If a person other than the donor has made an unrevoked anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829, another person who is not the donor may not make, amend, or revoke the gift of the donor's body or part under section 71-4833.

(d) A revocation of an anatomical gift of a donor's body or part under section 71-4829 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 71-4828 or 71-4833.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part for one or more of the purposes set forth in section 71-4827 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 71-4828 or 71-4833.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

**Source:** Laws 2010, LB1036, § 8.

**71-4832 Who may make anatomical gift of decedent's body or part.**

(a) Subject to subsections (b) and (c) of this section and unless barred by section 71-4830 or 71-4831, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (2) of section 71-4827 immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) The persons who were acting as the guardians of the person of the decedent at the time of death;

(9) An adult who exhibited special care and concern for the decedent other than any medical personnel caring for the decedent at the time of or immediately leading up to the decedent's death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (8) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 71-4834 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

**Source:** Laws 2010, LB1036, § 9.

**71-4833 Manner of making, amending, or revoking anatomical gift of decedent's body or part.**

(a) A person authorized to make an anatomical gift under section 71-4832 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 71-4832 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more

than one member of the prior class is reasonably available, the gift made by a person authorized under section 71-4832 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

**Source:** Laws 2010, LB1036, § 10.

**71-4834 Persons that may receive anatomical gift; purpose of anatomical gift.**

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; the State Anatomical Board; an accredited medical school, dental school, college, or university; an organ procurement organization; or any other appropriate person, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ;

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization; and

(5) If the gift is any part other than an organ, an eye, or tissue, or the gift is all parts, and the gift is for the purpose of research or education, the gift passes to the State Anatomical Board.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as donor, organ donor, or body donor, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank;

(2) If the part is tissue, the gift passes to the appropriate tissue bank; and

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 71-4828 or 71-4833 or if the person knows that the decedent made a refusal under section 71-4830 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in the Revised Uniform Anatomical Gift Act affects the allocation of organs for transplantation or therapy.

**Source:** Laws 2010, LB1036, § 11.

#### **71-4835 Search and notification.**

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

**Source:** Laws 2010, LB1036, § 12.

**71-4836 Delivery of document of gift not required; right to examine.**

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 71-4834.

**Source:** Laws 2010, LB1036, § 13.

**71-4837 Rights and duties of procurement organization and others.**

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donor Registry of Nebraska established pursuant to section 71-4822 and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Donor Registry of Nebraska or any donor registry described in subsection (a) of this section to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to determine the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology.

(d) Unless prohibited by law other than the Revised Uniform Anatomical Gift Act, at any time after a donor's death, the person to which a part passes under section 71-4834 may conduct any reasonable examination necessary to determine the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than the act, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 71-4832 having priority to make or object to the making of an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection (i) of section 71-4834 and sections 23-1825 to 23-1832, the rights of the person to which a part passes under section 71-4834 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and the act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 71-4834, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

**Source:** Laws 2010, LB1036, § 14.

#### **71-4838 Coordination of procurement and use.**

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

**Source:** Laws 2010, LB1036, § 15.

#### **71-4839 Sale or purchase of parts prohibited; penalty.**

(a) Except as otherwise provided in subsection (b) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation, therapy, research, or education if removal of a part from an individual is intended to occur after the individual's death commits a Class IIIA felony.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

**Source:** Laws 2010, LB1036, § 16.

#### **71-4840 Other prohibited acts; penalty.**

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a Class IIIA felony.

**Source:** Laws 2010, LB1036, § 17.

**71-4841 Immunity.**

(a) A person that acts with reasonable care in accordance with the Revised Uniform Anatomical Gift Act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under the Revised Uniform Anatomical Gift Act, a person may rely upon representations of an individual listed in subdivision (a)(2), (3), (4), (5), (6), (7), or (9) of section 71-4832 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

**Source:** Laws 2010, LB1036, § 18.

**71-4842 Law governing validity; choice of law as to execution of document of gift; presumption of validity.**

(a) A document of gift is valid if executed in accordance with:

- (1) The Revised Uniform Anatomical Gift Act;
- (2) The laws of the state or country where it was executed; or
- (3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

(d) The age restrictions of the Revised Uniform Anatomical Gift Act do not nullify any designation of gift made on a driver's license or state identification card prior to January 1, 2011, by a person younger than sixteen years of age which was valid when made. Such person shall be considered a donor under the act, and if such a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

**Source:** Laws 2010, LB1036, § 19.

**71-4843 Effect of anatomical gift on advance health care directive.**

(a) For purposes of this section:

- (1) Advance health care directive means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor;

(2) Declaration means a record signed by a prospective donor specifying the circumstances under which life-sustaining treatment may be withheld or withdrawn from the prospective donor; and

(3) Health care decision means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, a surrogate acting under the Health Care Surrogacy Act or another person authorized by law other than the Revised Uniform Anatomical Gift Act to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 71-4832. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

**Source:** Laws 2010, LB1036, § 20; Laws 2018, LB104, § 22.  
Effective date July 19, 2018.

#### Cross References

Health Care Surrogacy Act, see section 30-601.

#### **71-4844 Uniformity of application and construction.**

In applying and construing the Revised Uniform Anatomical Gift Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this uniform act.

**Source:** Laws 2010, LB1036, § 21.

#### **71-4845 Relation to Electronic Signatures in Global and National Commerce Act.**

The Revised Uniform Anatomical Gift Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

**Source:** Laws 2010, LB1036, § 22.



## ARTICLE 49

## CHRONIC RENAL DISEASES

## Section

- 71-4901. Chronic renal diseases; Department of Health and Human Services program; establish; definitions.
- 71-4902. Repealed. Laws 2002, LB 93, § 27.
- 71-4903. Department of Health and Human Services; duties.
- 71-4904. Chronic Renal Disease Cash Fund; created; purpose.
- 71-4905. Director of Administrative Services; warrants.

**71-4901 Chronic renal diseases; Department of Health and Human Services program; establish; definitions.**

The Department of Health and Human Services shall establish a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require life-saving care and treatment for such renal disease, but who are unable to pay for such services on a continuing basis. For the purposes of sections 71-4901 to 71-4905, chronic renal disease is defined as that stage of renal function in which the kidney is no longer able to maintain the integrity of the internal environment of the organism which condition is of a permanent and deteriorating state. Such condition shall include but not be limited to the following: (1) Chronic glomerulonephritis; (2) chronic pyelonephritis; (3) nephrotic syndrome; (4) polycystic kidney disease; (5) Kimmelstiel-Wilson disease; or (6) progressive focal glomerulonephritis such as lupus nephritis. For the purposes of sections 71-4901 to 71-4905, life-saving care and treatment is that care and treatment which requires constant medical attention and frequent hospitalization capable of restoring life or extending life beyond that normal for a person suffering from chronic renal disease.

**Source:** Laws 1972, LB 1270, § 1; Laws 1996, LB 1044, § 686.

**71-4902 Repealed. Laws 2002, LB 93, § 27.**

**71-4903 Department of Health and Human Services; duties.**

The Department of Health and Human Services shall:

(1) Develop standards for determining eligibility for care and treatment under this program and establish standards and qualifications of those patients unable to pay for treatment of chronic renal disease on a continuing basis. Such standards shall require that an individual:

- (a) Shall be a bona fide resident of the State of Nebraska;
- (b) Shall not be able to pay the total cost of such needed care and treatment without depriving himself or herself or those legally dependent upon him or her for their necessities of life;
- (c) Shall not have deprived himself or herself, directly or indirectly, of any property for the purpose of qualifying for assistance under the provisions of sections 71-4901 to 71-4905;
- (d) Shall not have relatives legally responsible to provide such care and treatment who refuse or neglect to provide such care and treatment in whole or in part without good cause; and

(e) Shall be a proper candidate for such care and treatment, including willingness of that person to receive such care and treatment;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic renal diseases, including dialysis, transplant, and other medical procedures and techniques which will have a life-saving effect in the care and treatment of persons suffering from these diseases;

(3) Assist in the development of programs for the prevention of chronic renal diseases;

(4) Extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases, including the renting of home dialysis equipment, and extend financial assistance to donors to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such donors;

(5) Assist in equipping dialysis centers and the planning of such on the basis of consultation with the comprehensive health planning office; and

(6) Institute and carry on an educational program among physicians, hospitals, public health departments, and the public concerning chronic renal diseases, including the dissemination of information and the conducting of educational programs concerning the prevention of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases.

**Source:** Laws 1972, LB 1270, § 3; Laws 1996, LB 1044, § 688; Laws 2002, LB 93, § 17.

**71-4904 Chronic Renal Disease Cash Fund; created; purpose.**

There is hereby created in the Department of Health and Human Services the Chronic Renal Disease Cash Fund. The fund shall be used for payment of services, granting of financial assistance, and participation in other state and federal programs for the purpose of caring for persons suffering from chronic renal disease.

**Source:** Laws 1972, LB 1270, § 5; Laws 1996, LB 1044, § 689.

**71-4905 Director of Administrative Services; warrants.**

The Director of Administrative Services is hereby authorized and directed to draw his warrants upon the proper funds in the state treasury for, but never in excess of, the sums herein specified upon presentation of proper vouchers. The State Treasurer shall pay the warrants out of money in the proper funds not otherwise appropriated.

**Source:** Laws 1972, LB 1270, § 6.

**ARTICLE 50**

**COMPASSION AND CARE FOR MEDICALLY  
CHALLENGING PREGNANCIES ACT**

Section

71-5001. Act, how cited.

71-5002. Terms, defined.

71-5003. Lethal fetal anomaly; physician or nurse practitioner; powers.

71-5004. Department; web site and information support sheet; duties; perinatal hospice program; request to include information.

**71-5001 Act, how cited.**

Sections 71-5001 to 71-5004 shall be known and may be cited as the Compassion and Care for Medically Challenging Pregnancies Act.

**Source:** Laws 2017, LB506, § 1.

**71-5002 Terms, defined.**

For purposes of the Compassion and Care for Medically Challenging Pregnancies Act:

- (1) Department means the Department of Health and Human Services;
- (2) Lethal fetal anomaly means a fetal condition diagnosed before birth that will, with reasonable certainty, result in the death of the unborn child within three months after birth;
- (3) Nurse practitioner means any person licensed to practice as a nurse practitioner in this state;
- (4) Perinatal hospice means comprehensive support to the pregnant woman and her family that includes support from the time of diagnosis, through the time of birth and the death of the infant, and through the postpartum period. Supportive care may include, but is not limited to, counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses focused on alleviating fear and ensuring that the woman and her family experience the life and death of their child in a comfortable and supportive environment; and
- (5) Physician means any person licensed to practice medicine and surgery in this state and includes osteopathic physicians.

**Source:** Laws 2017, LB506, § 2.

**71-5003 Lethal fetal anomaly; physician or nurse practitioner; powers.**

A physician or nurse practitioner who diagnoses an unborn child as having a lethal fetal anomaly may:

- (1) Inform the pregnant woman, orally and in person, that perinatal hospice services are available and offer or refer for this care; and
- (2) Deliver to the pregnant woman in writing the information support sheet provided by the department under section 71-5004.

**Source:** Laws 2017, LB506, § 3.

**71-5004 Department; web site and information support sheet; duties; perinatal hospice program; request to include information.**

(1) The department shall create and organize geographically a list of perinatal hospice programs available in Nebraska and nationally. The department shall post such information on its web site and shall include an information support sheet in English and Spanish on the web site that can be printed and delivered by physicians and nurse practitioners to the pregnant woman as provided in section 71-5003. The web site and information support sheet shall be completed and available within ninety days after August 24, 2017. The web site and information support sheet shall include:

(a) A statement indicating that perinatal hospice is an innovative and compassionate model of support for the pregnant woman who finds out that her baby has a life-limiting condition and who chooses to continue her pregnancy;

(b) A general description of the health care services available from perinatal hospice programs; and

(c) Pertinent contact information that includes any twenty-four-hour perinatal hospice services available.

(2) A perinatal hospice program may request that the department include the program's informational material and contact information on the web site. The department may add the information to the web site upon request.

**Source:** Laws 2017, LB506, § 4.

**ARTICLE 51**

**EMERGENCY MEDICAL SERVICES**

**Cross References**

**Emergency Medical Services Practice Act**, see section 38-1201.  
**EMS Personnel Licensure Interstate Compact**, see section 38-3801.  
**Statewide Trauma System Act**, see section 71-8201.  
**Uniform Credentialing Act**, see section 38-101.

(a) **EMERGENCY MEDICAL TECHNICIANS**

Section	
71-5101.	Repealed. Laws 1997, LB 138, § 57.
71-5102.	Repealed. Laws 1997, LB 138, § 57.
71-5103.	Repealed. Laws 1997, LB 138, § 57.
71-5104.	Repealed. Laws 1997, LB 138, § 57.
71-5105.	Repealed. Laws 1997, LB 138, § 57.
71-5106.	Repealed. Laws 1997, LB 138, § 57.
71-5107.	Repealed. Laws 1997, LB 138, § 57.
71-5108.	Repealed. Laws 1997, LB 138, § 57.
71-5108.01.	Repealed. Laws 1997, LB 138, § 57.
71-5109.	Repealed. Laws 1997, LB 138, § 57.
71-5110.	Repealed. Laws 1997, LB 138, § 57.
71-5111.	Repealed. Laws 1997, LB 138, § 57.
71-5112.	Repealed. Laws 1997, LB 138, § 57.
71-5113.	Repealed. Laws 1997, LB 138, § 57.
71-5114.	Repealed. Laws 1997, LB 138, § 57.
71-5115.	Repealed. Laws 1997, LB 138, § 57.
71-5116.	Repealed. Laws 1997, LB 138, § 57.
71-5117.	Repealed. Laws 1997, LB 138, § 57.
71-5118.	Repealed. Laws 1997, LB 138, § 57.
71-5119.	Repealed. Laws 1997, LB 138, § 57.
71-5120.	Repealed. Laws 1997, LB 138, § 57.
71-5121.	Repealed. Laws 1997, LB 138, § 57.
71-5122.	Repealed. Laws 1997, LB 138, § 57.
71-5123.	Repealed. Laws 1997, LB 138, § 57.
71-5124.	Repealed. Laws 1997, LB 138, § 57.
71-5125.	Repealed. Laws 1997, LB 138, § 57.
71-5126.	Repealed. Laws 1997, LB 138, § 57.
71-5127.	Repealed. Laws 1997, LB 138, § 57.
71-5128.	Repealed. Laws 1997, LB 138, § 57.
71-5129.	Repealed. Laws 1997, LB 138, § 57.
71-5130.	Repealed. Laws 1997, LB 138, § 57.
71-5130.01.	Repealed. Laws 1997, LB 138, § 57.
71-5131.	Repealed. Laws 1997, LB 138, § 57.
71-5132.	Repealed. Laws 1997, LB 138, § 57.
71-5133.	Repealed. Laws 1997, LB 138, § 57.

**EMERGENCY MEDICAL SERVICES**

Section

- 71-5134. Repealed. Laws 1997, LB 138, § 57.
- 71-5135. Repealed. Laws 1997, LB 138, § 57.
- 71-5136. Repealed. Laws 1997, LB 138, § 57.
- 71-5137. Repealed. Laws 1997, LB 138, § 57.
- 71-5138. Repealed. Laws 1997, LB 138, § 57.
- 71-5139. Repealed. Laws 1997, LB 138, § 57.
- 71-5140. Repealed. Laws 1997, LB 138, § 57.
- 71-5141. Repealed. Laws 1997, LB 138, § 57.
- 71-5142. Repealed. Laws 1997, LB 138, § 57.
- 71-5143. Repealed. Laws 1997, LB 138, § 57.
- 71-5144. Repealed. Laws 1997, LB 138, § 57.
- 71-5145. Repealed. Laws 1997, LB 138, § 57.
- 71-5146. Repealed. Laws 1997, LB 138, § 57.
- 71-5147. Repealed. Laws 1997, LB 138, § 57.
- 71-5148. Repealed. Laws 1997, LB 138, § 57.
- 71-5149. Repealed. Laws 1997, LB 138, § 57.
- 71-5150. Repealed. Laws 1997, LB 138, § 57.
- 71-5151. Repealed. Laws 1997, LB 138, § 57.
- 71-5152. Repealed. Laws 1997, LB 138, § 57.
- 71-5153. Repealed. Laws 1997, LB 138, § 57.
- 71-5154. Repealed. Laws 1997, LB 138, § 57.
- 71-5155. Repealed. Laws 1997, LB 138, § 57.
- 71-5156. Repealed. Laws 1997, LB 138, § 57.
- 71-5157. Repealed. Laws 1997, LB 138, § 57.
- 71-5158. Repealed. Laws 1997, LB 138, § 57.
- 71-5159. Repealed. Laws 1997, LB 138, § 57.
- 71-5160. Repealed. Laws 1997, LB 138, § 57.
- 71-5161. Repealed. Laws 1997, LB 138, § 57.
- 71-5162. Repealed. Laws 1997, LB 138, § 57.
- 71-5163. Repealed. Laws 1997, LB 138, § 57.
- 71-5164. Repealed. Laws 1997, LB 138, § 57.
- 71-5165. Repealed. Laws 1997, LB 138, § 57.

(b) NEBRASKA TRAUMA SYSTEMS DEVELOPMENT ACT

- 71-5166. Repealed. Laws 1998, LB 898, § 3.
- 71-5167. Repealed. Laws 1998, LB 898, § 3.
- 71-5168. Repealed. Laws 1998, LB 898, § 3.
- 71-5169. Repealed. Laws 1998, LB 898, § 3.
- 71-5170. Repealed. Laws 1998, LB 898, § 3.
- 71-5171. Repealed. Laws 1998, LB 898, § 3.

(c) EMERGENCY MEDICAL SERVICES ACT

- 71-5172. Transferred to section 38-1201.
- 71-5173. Transferred to section 38-1202.
- 71-5174. Transferred to section 38-1203.
- 71-5175. Transferred to section 38-1204.
- 71-5176. Transferred to section 38-1215.
- 71-5177. Transferred to section 38-1216.
- 71-5178. Transferred to section 38-1217.
- 71-5179. Transferred to section 38-1218.
- 71-5180. Repealed. Laws 2007, LB 463, § 1319.
- 71-5181. Repealed. Laws 2007, LB 463, § 1319.
- 71-5181.01. Transferred to section 38-1222.
- 71-5182. Repealed. Laws 2007, LB 463, § 1319.
- 71-5183. Transferred to section 38-1223.
- 71-5184. Transferred to section 38-1224.
- 71-5185. Transferred to section 38-1225.
- 71-5186. Transferred to section 38-1226.
- 71-5187. Transferred to section 38-1227.
- 71-5188. Transferred to section 38-1228.
- 71-5189. Transferred to section 38-1229.

Section

- 71-5190. Transferred to section 38-1230.
- 71-5191. Transferred to section 38-1220.
- 71-5192. Repealed. Laws 2007, LB 463, § 1319.
- 71-5193. Transferred to section 38-1231.
- 71-5194. Transferred to section 38-1232.
- 71-5195. Transferred to section 38-1233.
- 71-5196. Transferred to section 38-1234.
- 71-5197. Transferred to section 38-1235.
- 71-5198. Transferred to section 38-1236.
- 71-5199. Transferred to section 38-1237.
- 71-51,100. Repealed. Laws 2007, LB 463, § 1319.
- 71-51,101. Repealed. Laws 1997, LB 90, § 8.

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

- 71-51,102. Automated external defibrillator; use; conditions; liability.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

- 71-51,103. Nebraska Emergency Medical System Operations Fund; created; use; investment.

(a) EMERGENCY MEDICAL TECHNICIANS

- 71-5101 Repealed. Laws 1997, LB 138, § 57.**
- 71-5102 Repealed. Laws 1997, LB 138, § 57.**
- 71-5103 Repealed. Laws 1997, LB 138, § 57.**
- 71-5104 Repealed. Laws 1997, LB 138, § 57.**
- 71-5105 Repealed. Laws 1997, LB 138, § 57.**
- 71-5106 Repealed. Laws 1997, LB 138, § 57.**
- 71-5107 Repealed. Laws 1997, LB 138, § 57.**
- 71-5108 Repealed. Laws 1997, LB 138, § 57.**
- 71-5108.01 Repealed. Laws 1997, LB 138, § 57.**
- 71-5109 Repealed. Laws 1997, LB 138, § 57.**
- 71-5110 Repealed. Laws 1997, LB 138, § 57.**
- 71-5111 Repealed. Laws 1997, LB 138, § 57.**
- 71-5112 Repealed. Laws 1997, LB 138, § 57.**
- 71-5113 Repealed. Laws 1997, LB 138, § 57.**
- 71-5114 Repealed. Laws 1997, LB 138, § 57.**
- 71-5115 Repealed. Laws 1997, LB 138, § 57.**
- 71-5116 Repealed. Laws 1997, LB 138, § 57.**
- 71-5117 Repealed. Laws 1997, LB 138, § 57.**
- 71-5118 Repealed. Laws 1997, LB 138, § 57.**
- 71-5119 Repealed. Laws 1997, LB 138, § 57.**

- 71-5120 Repealed. Laws 1997, LB 138, § 57.
- 71-5121 Repealed. Laws 1997, LB 138, § 57.
- 71-5122 Repealed. Laws 1997, LB 138, § 57.
- 71-5123 Repealed. Laws 1997, LB 138, § 57.
- 71-5124 Repealed. Laws 1997, LB 138, § 57.
- 71-5125 Repealed. Laws 1997, LB 138, § 57.
- 71-5126 Repealed. Laws 1997, LB 138, § 57.
- 71-5127 Repealed. Laws 1997, LB 138, § 57.
- 71-5128 Repealed. Laws 1997, LB 138, § 57.
- 71-5129 Repealed. Laws 1997, LB 138, § 57.
- 71-5130 Repealed. Laws 1997, LB 138, § 57.
- 71-5130.01 Repealed. Laws 1997, LB 138, § 57.
- 71-5131 Repealed. Laws 1997, LB 138, § 57.
- 71-5132 Repealed. Laws 1997, LB 138, § 57.
- 71-5133 Repealed. Laws 1997, LB 138, § 57.
- 71-5134 Repealed. Laws 1997, LB 138, § 57.
- 71-5135 Repealed. Laws 1997, LB 138, § 57.
- 71-5136 Repealed. Laws 1997, LB 138, § 57.
- 71-5137 Repealed. Laws 1997, LB 138, § 57.
- 71-5138 Repealed. Laws 1997, LB 138, § 57.
- 71-5139 Repealed. Laws 1997, LB 138, § 57.
- 71-5140 Repealed. Laws 1997, LB 138, § 57.
- 71-5141 Repealed. Laws 1997, LB 138, § 57.
- 71-5142 Repealed. Laws 1997, LB 138, § 57.
- 71-5143 Repealed. Laws 1997, LB 138, § 57.
- 71-5144 Repealed. Laws 1997, LB 138, § 57.
- 71-5145 Repealed. Laws 1997, LB 138, § 57.
- 71-5146 Repealed. Laws 1997, LB 138, § 57.
- 71-5147 Repealed. Laws 1997, LB 138, § 57.
- 71-5148 Repealed. Laws 1997, LB 138, § 57.
- 71-5149 Repealed. Laws 1997, LB 138, § 57.

- 71-5150 Repealed. Laws 1997, LB 138, § 57.
- 71-5151 Repealed. Laws 1997, LB 138, § 57.
- 71-5152 Repealed. Laws 1997, LB 138, § 57.
- 71-5153 Repealed. Laws 1997, LB 138, § 57.
- 71-5154 Repealed. Laws 1997, LB 138, § 57.
- 71-5155 Repealed. Laws 1997, LB 138, § 57.
- 71-5156 Repealed. Laws 1997, LB 138, § 57.
- 71-5157 Repealed. Laws 1997, LB 138, § 57.
- 71-5158 Repealed. Laws 1997, LB 138, § 57.
- 71-5159 Repealed. Laws 1997, LB 138, § 57.
- 71-5160 Repealed. Laws 1997, LB 138, § 57.
- 71-5161 Repealed. Laws 1997, LB 138, § 57.
- 71-5162 Repealed. Laws 1997, LB 138, § 57.
- 71-5163 Repealed. Laws 1997, LB 138, § 57.
- 71-5164 Repealed. Laws 1997, LB 138, § 57.
- 71-5165 Repealed. Laws 1997, LB 138, § 57.

(b) NEBRASKA TRAUMA SYSTEMS DEVELOPMENT ACT

- 71-5166 Repealed. Laws 1998, LB 898, § 3.
- 71-5167 Repealed. Laws 1998, LB 898, § 3.
- 71-5168 Repealed. Laws 1998, LB 898, § 3.
- 71-5169 Repealed. Laws 1998, LB 898, § 3.
- 71-5170 Repealed. Laws 1998, LB 898, § 3.
- 71-5171 Repealed. Laws 1998, LB 898, § 3.

(c) EMERGENCY MEDICAL SERVICES ACT

- 71-5172 Transferred to section 38-1201.
- 71-5173 Transferred to section 38-1202.
- 71-5174 Transferred to section 38-1203.
- 71-5175 Transferred to section 38-1204.
- 71-5176 Transferred to section 38-1215.
- 71-5177 Transferred to section 38-1216.



- 71-5178 Transferred to section 38-1217.
- 71-5179 Transferred to section 38-1218.
- 71-5180 Repealed. Laws 2007, LB 463, § 1319.
- 71-5181 Repealed. Laws 2007, LB 463, § 1319.
- 71-5181.01 Transferred to section 38-1222.
- 71-5182 Repealed. Laws 2007, LB 463, § 1319.
- 71-5183 Transferred to section 38-1223.
- 71-5184 Transferred to section 38-1224.
- 71-5185 Transferred to section 38-1225.
- 71-5186 Transferred to section 38-1226.
- 71-5187 Transferred to section 38-1227.
- 71-5188 Transferred to section 38-1228.
- 71-5189 Transferred to section 38-1229.
- 71-5190 Transferred to section 38-1230.
- 71-5191 Transferred to section 38-1220.
- 71-5192 Repealed. Laws 2007, LB 463, § 1319.
- 71-5193 Transferred to section 38-1231.
- 71-5194 Transferred to section 38-1232.
- 71-5195 Transferred to section 38-1233.
- 71-5196 Transferred to section 38-1234.
- 71-5197 Transferred to section 38-1235.
- 71-5198 Transferred to section 38-1236.
- 71-5199 Transferred to section 38-1237.
- 71-51,100 Repealed. Laws 2007, LB 463, § 1319.
- 71-51,101 Repealed. Laws 1997, LB 90, § 8.

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

**71-51,102 Automated external defibrillator; use; conditions; liability.**

(1) For purposes of this section:

(a) Automated external defibrillator means a device that:

(i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and

(ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed;

(b) Emergency medical service means an emergency medical service as defined in section 38-1207;

(c) Health care facility means a health care facility as defined in section 71-413;

(d) Health care practitioner facility means a health care practitioner facility as defined in section 71-414; and

(e) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services and who is authorized within his or her scope of practice to use an automated external defibrillator.

(2) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be construed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 38-1232.

(3) A person acquiring an automated external defibrillator shall notify the local emergency medical service of the existence, location, and type of the defibrillator and of any change in the location of such defibrillator unless the defibrillator was acquired for use in a private residence, a health care facility, or a health care practitioner facility.

**Source:** Laws 1999, LB 498, § 1; Laws 2000, LB 819, § 111; Laws 2003, LB 667, § 12; Laws 2005, LB 176, § 1; Laws 2007, LB296, § 605; Laws 2007, LB463, § 1221.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

**71-51,103 Nebraska Emergency Medical System Operations Fund; created; use; investment.**

There is hereby created the Nebraska Emergency Medical System Operations Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Statewide Trauma System Act and the Emergency Medical Services Practice Act, including activities related to the design, maintenance, or enhancement of the statewide trauma system, support of emergency medical services programs, and support for the emergency medical services programs for children. 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 2001, LB 191, § 2; Laws 2007, LB296, § 606; Laws 2007, LB463 § 1222; Laws 2012, LB782, § 119; Laws 2013, LB222, § 28.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.  
 Nebraska Capital Expansion Act, see section 72-1269.  
 Nebraska State Funds Investment Act, see section 72-1260.  
 Statewide Trauma System Act, see section 71-8201.

**ARTICLE 52**  
**RESIDENT PHYSICIAN EDUCATION AND**  
**DENTAL EDUCATION PROGRAMS**

(a) FAMILY PRACTICE RESIDENCY

- Section
- 71-5201. Terms, defined.
  - 71-5202. Medical education residency program; established; purpose; implementation.
  - 71-5203. Residency programs; funding; use of funds.
  - 71-5204. Funding; designation of minimum enrollments and priorities.
  - 71-5205. Family practice residency program; how funded.
  - 71-5206. Family practice residents; contract with other programs to assist in training; when; requirements.
  - 71-5206.01. Family practice residents; funding of stipends and benefits.
  - 71-5207. Recruitment and training of physicians for rural communities; program established; purpose.

(b) DENTAL PROGRAM

- 71-5208. Dental education program in comprehensive dentistry; established; purpose; implementation.
- 71-5209. Comprehensive dentistry program; funding.

(c) PRIMARY CARE PROVIDER ACT

- 71-5210. Act, how cited.
- 71-5211. Primary care, defined.
- 71-5212. Postgraduate residency training program; University of Nebraska Medical Center and Creighton University Medical Center; develop plans.
- 71-5213. Repealed. Laws 2012, LB 782, § 253.

(a) FAMILY PRACTICE RESIDENCY

**71-5201 Terms, defined.**

For purposes of sections 71-5201 to 71-5209, unless the context otherwise requires:

- (1) Residency program shall mean a residency education program which is approved by the Accreditation Council for Graduate Medical Education;
- (2) Model ambulatory practice unit shall mean the facilities or classrooms for the teaching of ambulatory health care skills within a residency program;
- (3) Medical profession shall mean medical physicians and osteopathic physicians; and
- (4) College of Medicine shall mean the University of Nebraska College of Medicine.

**Source:** Laws 1975, LB 571, § 1; Laws 1993, LB 152, § 1.

**71-5202 Medical education residency program; established; purpose; implementation.**

There is hereby established a statewide medical education residency program for the purpose of training resident physicians. The Dean of the College of

Medicine of the University of Nebraska Medical Center shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The dean and the departmental chairmen in the College of Medicine shall determine where residency education and training shall be established, giving consideration to communities in the state where the population, hospital facilities, number of physicians and interest in medical education indicate the potential success of residency education and training. The communities chosen shall be selected because they can be expected to fill requirements of the American Medical Association for participation in a residency program.

**Source:** Laws 1975, LB 571, § 2.

**71-5203 Residency programs; funding; use of funds.**

The Legislature shall provide funding for residency programs as provided in sections 71-5201 to 71-5209. Such funding shall be in addition to all other funding of the University of Nebraska, including current sources of funding house officer education and training. The funding for the residency programs shall not be used to supplant funds for other programs under the administration of the College of Medicine or the University of Nebraska Medical Center.

Residency program funding shall include, but not be limited to:

- (1) Stipends for the residents in training;
- (2) Salaries of appropriate faculty and auxiliary support personnel and operational budget items; and
- (3) Initial construction costs and costs to remodel existing facilities to serve as model ambulatory practice units within a residency program.

**Source:** Laws 1975, LB 571, § 3; Laws 1993, LB 152, § 2.

**71-5204 Funding; designation of minimum enrollments and priorities.**

Funding provided by section 71-5203 shall be sufficient to provide for the following minimal residency enrollments:

- (1) During fiscal year 1975-76, funding shall be provided for two hundred eighty-three residencies, including forty-three in the family practice residency program;
- (2) During fiscal year 1976-77, funding shall be provided for three hundred seven residencies, including fifty-five in the family practice residency program;
- (3) During fiscal year 1977-78, funding shall be provided for three hundred seventeen residencies, including fifty-seven in the family practice residency program;
- (4) During fiscal year 1978-79, and each year thereafter, funding shall be provided for three hundred twenty residencies, including sixty in the family practice residency program;
- (5) During fiscal year 1975-76 and each year thereafter, funding shall be provided for thirty additional family practice residencies in the State of Nebraska through associated residency programs; and

(6) Any residencies which may be funded, in addition to those provided in this section, shall be family practice residencies. Beginning July 1, 1976, any expansion of residencies, other than family practice residencies, shall be

initiated only when the demand for such specialties is shown by patient numbers and need in the State of Nebraska.

**Source:** Laws 1975, LB 571, § 4.

**71-5205 Family practice residency program; how funded.**

The family practice residency program may be funded in part by grants provided by the Department of Health and Human Services or agencies of the federal government. If such grants are provided, the Legislature shall not provide funding for such program.

**Source:** Laws 1975, LB 571, § 5; Laws 1996, LB 1044, § 711; Laws 2007, LB296, § 607.

**71-5206 Family practice residents; contract with other programs to assist in training; when; requirements.**

If the College of Medicine of the University of Nebraska is unable to train the number of family practice residents provided for in section 71-5204, the college may, with the approval of the Board of Regents of the University of Nebraska, contract with other associated programs which:

- (1) Comply with the essentials for residency training in family practice as specified by the American Medical Association;
- (2) Are approved or eligible for approval by the Accreditation Council for Graduate Medical Education;
- (3) Are affiliated with an accredited medical school; and
- (4) Are not receiving funds pursuant to section 71-5206.01.

**Source:** Laws 1975, LB 571, § 6; Laws 1993, LB 152, § 3; Laws 1999, LB 241, § 1.

**71-5206.01 Family practice residents; funding of stipends and benefits.**

(1) The Legislature may provide funding to the Office of Rural Health for the purpose of funding the cost of resident stipends and benefits, which funding may include health insurance, professional liability insurance, disability insurance, medical education expenses, continuing competency expenses, pension benefits, moving expenses, and meal expenses in family practice residency programs based in Nebraska but which are not under a contract pursuant to section 71-5206. The resident stipends and benefits funded in this section shall apply only to residents who begin family practice residency training at a qualifying institution in years beginning on or after January 1, 1993. The total funding provided in the form of stipend and benefit support per resident to a family practice residency program under this section shall not exceed the total funding provided in the form of stipend and benefit support per resident to a family practice residency program under section 71-5203.

(2) Upon receiving an itemized statement of the cost of stipends and benefits of a family practice residency program from a sponsoring institution and upon determining that the sponsoring institution is not receiving funds under a contract pursuant to section 71-5206, the office may reimburse such institution fifty percent of such cost for each family practice resident in the program. The office may reimburse such institution twenty-five percent of the remaining cost per family practice resident for each year that one of the program's graduates practices family medicine in Nebraska, up to a maximum of three years for

each graduate, and an additional twenty-five percent of the remaining cost per resident for each of the program's graduates who practices family medicine in an area of Nebraska classified as of January 1, 1991, by the United States Secretary of Health and Human Services as Medicare Locale 16. The total number of residents receiving annual financial payments made under this section shall not exceed nine students during any school year.

**Source:** Laws 1993, LB 152, § 4; Laws 1999, LB 241, § 2; Laws 2002, LB 1021, § 89; Laws 2012, LB782, § 120; Laws 2013, LB222, § 29.

**71-5207 Recruitment and training of physicians for rural communities; program established; purpose.**

There is hereby created a program for the recruitment and training of physicians for rural communities, which shall be included as a program in the general budget of the University of Nebraska Medical Center. The purpose of such program shall be to coordinate, train, and recruit physicians to meet the medical service needs of rural communities.

**Source:** Laws 1975, LB 571, § 7.

(b) DENTAL PROGRAM

**71-5208 Dental education program in comprehensive dentistry; established; purpose; implementation.**

There is hereby established a statewide dental education program in comprehensive dentistry for the purpose of training dentists in the clinic of the College of Dentistry during the senior year of dental training. The Dean of the College of Dentistry of the University of Nebraska shall be responsible for implementing the comprehensive dentistry program.

**Source:** Laws 1975, LB 571, § 8.

**71-5209 Comprehensive dentistry program; funding.**

Funding for the comprehensive dentistry program shall be provided in the manner set forth in section 71-5203.

**Source:** Laws 1975, LB 571, § 9.

(c) PRIMARY CARE PROVIDER ACT

**71-5210 Act, how cited.**

Sections 71-5210 to 71-5212 shall be known and may be cited as the Primary Care Provider Act.

**Source:** Laws 1994, LB 1223, § 69; Laws 2012, LB782, § 121.

**71-5211 Primary care, defined.**

For purposes of the Primary Care Provider Act, primary care means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry.

**Source:** Laws 1994, LB 1223, § 70; Laws 1996, LB 1155, § 43.

**71-5212 Postgraduate residency training program; University of Nebraska Medical Center and Creighton University Medical Center; develop plans.**

The University of Nebraska Medical Center and the Creighton University Medical Center shall each develop a separate plan to increase the number of graduates from its medical center who enter a primary care postgraduate residency training program. Each report shall include numerical goals and timeframes for such increases. Each medical center shall request input from the Nebraska Rural Health Advisory Commission in the formation of the plans.

**Source:** Laws 1994, LB 1223, § 71; Laws 1996, LB 1155, § 44.

**71-5213 Repealed. Laws 2012, LB 782, § 253.**

**ARTICLE 53  
DRINKING WATER**

**Cross References**

**Credentialing provisions**, see sections 38-1,119 to 38-1,123.

**Drinking water**, standards for pesticide levels, see section 2-2626.

**Residential Lead-Based Paint Professions Practice Act**, see section 71-6318.

**Wastewater Treatment Facilities Construction Assistance Act**, see section 81-15,147.

**Wastewater Treatment Operator Certification Act**, see section 81-15,128.

**(a) NEBRASKA SAFE DRINKING WATER ACT**

**Section**

- 71-5301. Terms, defined.
- 71-5301.01. Use of lead-free materials; rules and regulations.
- 71-5302. Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system.
- 71-5303. Public water system; permit; director; powers; hearing; appeal.
- 71-5304. Rules and regulations; construction and operation of system; objectives.
- 71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties.
- 71-5304.02. Public water system; notice; requirements.
- 71-5305. Public water system; construction, extension, or alteration; written authorization required; exception; procedure.
- 71-5305.01. Certain new water systems; technical, managerial, and financial capacity.
- 71-5305.02. Capacity development strategy; department; solicit public comment.
- 71-5306. Director; powers and duties; Safe Drinking Water Act Cash Fund; created; use; investment.
- 71-5307. Operator of public water system; license required.
- 71-5308. License; application; issuance; disciplinary actions; grounds; existing certificate holder; how treated.
- 71-5309. Qualifications of operators of public water system; license; rules and regulations; expired license; relicensure; department; powers and duties.
- 71-5310. Director; authorize variances or exemptions to standards; procedure.
- 71-5310.01. Notice, order, or other instrument; service.
- 71-5311. Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses.
- 71-5311.01. Compliance not dependent on funding.
- 71-5311.02. Voluntary compliance.
- 71-5312. Violations; penalty; county attorney or Attorney General; action to assure compliance.
- 71-5312.01. Existing rules, regulations, certificates, forms of approval, suits, other proceedings; how treated.
- 71-5313. Act, how cited.

**(b) DRINKING WATER STATE REVOLVING FUND ACT**

- 71-5314. Act, how cited.
- 71-5315. Legislative findings.
- 71-5316. Terms, defined.
- 71-5317. Federal grants; director; powers.

Section	
71-5318.	Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment.
71-5319.	Repayment of loan or credit; effect.
71-5320.	Pledge; effect.
71-5321.	Council; powers and duties.
71-5322.	Department; powers and duties.
71-5323.	Loans; eligibility.
71-5324.	Loans; requirements.
71-5325.	Loan terms.
71-5326.	Repealed. Laws 2011, LB 383, § 9.
71-5327.	Reserves authorized.

(a) NEBRASKA SAFE DRINKING WATER ACT

**71-5301 Terms, defined.**

For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

- (1) Council means the Advisory Council on Public Water Supply;
- (2) Department means the Division of Public Health of the Department of Health and Human Services;
- (3) Director means the Director of Public Health of the Division of Public Health or his or her authorized representative;
- (4) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the director has consummated a legal and binding contract covering specifically delegated responsibilities;
- (5) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;
- (6) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;
- (7) Owner means any person owning or operating a public water system;
- (8) Person means any individual, corporation, firm, partnership, limited liability company, association, company, trust, estate, public or private institution, group, agency, political subdivision, or other entity or any legal successor, representative, agent, or agency of any of such entities;
- (9) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;
- (10)(a) Public water system means a system for providing the public with water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (i) any collection, treatment, storage, and distribu-



tion facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system.

(b) Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

(c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b)(ii) or (iii) of this subdivision;

(11) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the director, may have an adverse effect on the health of persons and (b) apply only to public water systems;

(12) Lead free means (a) not containing more than two-tenths percent lead when used with respect to solder and flux and (b) not containing more than a weighted average of twenty-five hundredths percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;

(13) Community water system means a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents;

(14) Noncommunity water system means a public water system that is not a community water system; and

(15) Nontransient noncommunity water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year.

**Source:** Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1; Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712; Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28; Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98; Laws 2007, LB296, § 608; Laws 2007, LB463, § 1223; Laws 2012, LB723, § 1; Laws 2016, LB899, § 1.

#### **71-5301.01 Use of lead-free materials; rules and regulations.**

The director may adopt and promulgate rules and regulations regarding the use of lead-free materials in public water systems in compliance with standards established in accordance with 42 U.S.C. 300g, as such section existed on January 1, 2016.

**Source:** Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29; Laws 2016, LB899, § 2.

**71-5302 Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system.**

(1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director or the Department of Environmental Quality. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in need based upon

affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

**Source:** Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3; Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30; Laws 2007, LB296, § 609.

**Cross References**

**Drinking water**, standards for pesticide levels, see section 2-2626.

**71-5303 Public water system; permit; director; powers; hearing; appeal.**

(1) No person shall operate or maintain a public water system without first obtaining a permit to operate such system from the director. No fee shall be charged for the issuance of such permit.

(2) The director shall inspect public water systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of operators. The director may deny or revoke a permit, issue administrative orders scheduling action to be taken, take emergency action as provided in section 71-5304.01, and seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the Nebraska Safe Drinking Water Act.

(3) A permit may be denied or revoked for noncompliance with the act, the rules and regulations adopted and promulgated under the act, or the terms of a variance or exemption issued pursuant to section 71-5310.

(4) Any person shall be granted, upon request, an opportunity for a hearing before the department under the Administrative Procedure Act prior to the denial or revocation of a permit. The denial or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1976, LB 821, § 3; Laws 1988, LB 383, § 4; Laws 1988, LB 352, § 139; Laws 1996, LB 1044, § 713; Laws 2000, LB 1115, § 77; Laws 2001, LB 667, § 31; Laws 2003, LB 31, § 4; Laws 2007, LB296, § 610; Laws 2007, LB463, § 1224.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-5304 Rules and regulations; construction and operation of system; objectives.**

(1) The director shall adopt and promulgate necessary minimum rules and regulations governing the siting, design, construction, alteration, classification, and operation of public water systems to insure that such public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological materials which are determined by the director, pursuant to section 71-5302, to be harmful to the physical health of human beings. In adopting such rules and regulations, the director shall attempt to meet the following objectives:

(a) Insure that facilities are physically separated, to the greatest extent possible, from water or land areas which contain high levels of materials which are harmful to humans;

(b) Insure that such facilities, and all parts thereof, are physically sealed so that leakage of harmful materials into the public water system itself from sources outside the system shall not occur;

(c) Insure that all materials which are used in the construction of a system shall not place harmful materials into the public water system;

(d) Insure that all chemicals or other substances used to treat and purify water are free from harmful materials; and

(e) Insure, to the greatest extent possible, that such rules and regulations will allow uninterrupted and efficient operation of public water systems.

(2) The rules and regulations may contain differences and distinctions based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the objectives of this section are met.

**Source:** Laws 1976, LB 821, § 4; Laws 2001, LB 667, § 32; Laws 2003, LB 31, § 5.

**71-5304.01 Violations; administrative orders; director; emergency powers; hearing; administrative penalties.**

(1) Whenever the director has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the permittee or permittees named in the order request in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the permittee or permittees appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(3) The director shall afford to the alleged violator an opportunity for a fair hearing before the director under the Administrative Procedure Act.

(4) In addition to any other remedy provided by law, the director may issue an order assessing an administrative penalty upon a violator.

(5) The range of administrative penalties assessed under this section for a public water system serving ten thousand or more persons shall be not less than one thousand dollars per day or part thereof for each violation, not to exceed

twenty-five thousand dollars in the aggregate. Administrative penalties for a public water system serving fewer than ten thousand persons shall be not more than five hundred dollars per day or part thereof for each violation, not to exceed five thousand dollars in the aggregate. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm or potential harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, and any other factors which the department may reasonably deem relevant. The administrative penalty assessment shall state specific amounts to be paid for each violation identified in the order.

(6) An administrative penalty shall be paid within sixty days after the date of issuance of the order assessing the penalty. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for the penalty amount plus any statutory interest rate applicable to judgments. An order under this section imposing an administrative penalty may be appealed to the director in the manner provided for in subsection (1) of this section. Any administrative penalty paid pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. An action may be brought in the appropriate court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of the penalty.

**Source:** Laws 1988, LB 383, § 5; Laws 1996, LB 1044, § 714; Laws 1997, LB 517, § 19; Laws 2001, LB 667, § 33; Laws 2007, LB296, § 611; Laws 2012, LB723, § 2.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-5304.02 Public water system; notice; requirements.**

(1) The director may require a public water system to give notice to the persons served by the system and to the department whenever the system:

(a) Is not in compliance with an applicable maximum contaminant level or treatment technique requirement of or a testing procedure prescribed by rules and regulations adopted and promulgated under the Nebraska Safe Drinking Water Act;

(b) Fails to perform monitoring, testing, analyzing, or sampling as required;

(c) Is subject to a variance or exemption; or

(d) Is not in compliance with the requirements prescribed by a variance or exemption.

(2) The director may require a public water system to give notice to the persons served by the public water system of potential sources of contamination as identified by the director under subsection (2) of section 71-5302, of possible health effects of such contamination, and of possible mitigation measures.

(3) The director shall by rule and regulation prescribe the form and manner for giving such notice.

**Source:** Laws 1988, LB 383, § 6; Laws 1996, LB 1044, § 715; Laws 2001, LB 667, § 34; Laws 2007, LB296, § 612.

**71-5305 Public water system; construction, extension, or alteration; written authorization required; exception; procedure.**

(1) No major construction, extension, or alteration of a public water system shall be commenced without written authorization from the director. No such authorization shall be needed in the case of minor repairs and matters of maintenance. No such authorization shall be granted unless plans and specifications, prepared by a professional engineer, and any additional information required by the department have been submitted to the department or its designated agent for review.

(2) Upon a finding that there has been compliance with the minimum sanitary requirements adopted pursuant to section 71-5304, authorization to proceed with construction shall be granted by the director or his or her designated agent. In issuing authorization for the development of new public water supply sources, consideration shall be given to the location and effects of other water supply systems and the location of points of discharge or disposal for solid and liquid wastes.

**Source:** Laws 1976, LB 821, § 5; Laws 1997, LB 622, § 109; Laws 2001, LB 667, § 35.

**71-5305.01 Certain new water systems; technical, managerial, and financial capacity.**

All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The director may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

**Source:** Laws 1997, LB 517, § 20; Laws 2007, LB296, § 613.

**71-5305.02 Capacity development strategy; department; solicit public comment.**

The department shall develop a capacity development strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 71-5305.01. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

(3) A description of how the department will:

(a) Assist public water systems in complying with the Nebraska Safe Drinking Water Act;

(b) Encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(c) Assist public water systems in the training and licensure of operators; and

(4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

**Source:** Laws 1997, LB 517, § 21; Laws 2001, LB 667, § 36; Laws 2007, LB296, § 614; Laws 2007, LB463, § 1225.

**71-5306 Director; powers and duties; Safe Drinking Water Act Cash Fund; created; use; investment.**

(1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services, Division of Public Health, Environmental Laboratory, or at any other certified laboratory which has entered into an agreement with the department therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(d) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(e) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(f) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(g) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2)(a) The director shall certify and enter into authorization agreements with laboratories to perform tests on water that is intended for human consumption, including the tests required by the director for compliance and monitoring purposes. The director shall establish, through rules and regulations, standards for certification. Such standards (i) may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results,

(ii) shall provide for certification of independent laboratories to test samples provided by public water systems for all acute toxins for which the department tests such samples, including, but not limited to, coliform, nitrates, inorganic chemicals, organic chemicals, radionuclides, and any other acute toxins for which the department tests such samples, and (iii) shall be consistent with requirements for performing laboratory tests established by the United States Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees and fees for certifying other laboratories shall be established and collected to defray the cost of the inspections and certification as provided in sections 71-2619 to 71-2621.

(b) Laboratories shall be allowed to test water samples which are not compliance samples by testing methods other than the methods and procedures required to be used on compliance samples by rules and regulations of the department. For purposes of this section, compliance sample means a water sample required under the Nebraska Safe Drinking Water Act and rules and regulations of the department to determine whether a public water system meets current drinking water standards.

(3) All fees collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water 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 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615; Laws 2008, LB928, § 30; Laws 2016, LB19, § 1.

#### Cross References

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

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

#### **71-5307 Operator of public water system; license required.**

No public water system shall be issued or otherwise hold a permit to operate a public water system, granted by the department, unless its operator possesses a license issued by the department.

**Source:** Laws 1976, LB 821, § 7; Laws 2001, LB 667, § 38; Laws 2007, LB463, § 1226.

#### **71-5308 License; application; issuance; disciplinary actions; grounds; existing certificate holder; how treated.**

Application for a license to act as a licensed operator of a public water system shall be made as provided in the Uniform Credentialing Act. The department shall establish and collect fees for licenses as provided in sections



38-151 to 38-157. An operator shall be licensed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued under the Nebraska Safe Drinking Water Act may be disciplined for any violation of the act or the rules and regulations adopted and promulgated under the act.

An individual holding a certificate as a certified operator of a public water system under the Nebraska Safe Drinking Water Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Nebraska Safe Drinking Water Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

**Source:** Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131; Laws 2007, LB463, § 1227.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-5309 Qualifications of operators of public water system; license; rules and regulations; expired license; relicensure; department; powers and duties.**

(1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system.

(2) The director may require, by rule and regulation, that the applicant for a license successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(3) An applicant for a license as a public water system operator under the Nebraska Safe Drinking Water Act who previously held a license or certification as a public water system operator under the act and whose license or certification expired two years or more prior to the date of application shall take the examination required to be taken by an applicant for an initial license under the act. The department's review of the application for licensure by an applicant under this subsection shall include the results of such examination and the applicant's experience and training. The department may by rules and regulations establish requirements for relicensure under the act which are

more stringent for applicants whose license is expired or has been revoked or suspended than those for applicants for initial licensure.

**Source:** Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6; Laws 2007, LB463, § 1228; Laws 2009, LB288, § 35.

**71-5310 Director; authorize variances or exemptions to standards; procedure.**

(1) The director, with the approval of the council, may authorize variances or exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the federal Safe Drinking Water Act as the act existed on July 20, 2002.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water system, of the proposed exemption or variance and that interested persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice necessary to provide adequate notice to persons served by the system.

If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the department prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

**Source:** Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54; Laws 2007, LB296, § 616.

**71-5310.01 Notice, order, or other instrument; service.**

Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director under the Nebraska Safe Drinking Water Act may be served on any person affected by such notice, order, or other instrument, personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the department, or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail directed to the person affected at his or her last-known post office address as shown by the files or records of the department, and proof of service may be made by the affidavit of the person who did the mailing and filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts stated in such certificate or affidavit, and a certified copy shall have like force and effect.

**Source:** Laws 1988, LB 383, § 9; Laws 1996, LB 1044, § 718; Laws 2007, LB296, § 617.

**71-5311 Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses.**

(1) There is hereby established the Advisory Council on Public Water Supply which shall advise and assist the department in administering the Nebraska Safe Drinking Water Act.

(2) The council shall be composed of seven members appointed by the Governor, (a) one of whom shall be a professional engineer, (b) one of whom shall be a licensed physician, (c) two of whom shall be consumers of a public water system, (d) two of whom shall be operators of a public water system who possess a license issued by the department to operate a public water system. One such operator shall represent a system serving a population of five thousand or less, and one such operator shall represent a system serving a population of more than five thousand, and (e) one of whom shall be, at the time of appointment, (i) an individual who owns a public water system, (ii) a member of the governing board of a public or private corporation which owns a public water system, or (iii) in the case of a political subdivision which owns a public water system, a member of the subdivision's governing board or board of public works or similar board which oversees the operation of a public water system.

(3) All members shall be appointed for three-year terms. No member shall serve more than three consecutive three-year terms. Each member shall hold office until the expiration of his or her term or until a successor has been appointed. Any vacancy occurring in council membership, other than by expiration of term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

(4) The council shall meet not less than once each year. Special meetings of the council may be called by the director or upon the written request of any two members of the council explaining the reason for such meeting. The place of the meeting shall be set by the director. Such officers as the council deems necessary shall be elected every three years beginning with the first meeting in the year 1990. A majority of the members of the council shall constitute a quorum for the transaction of business. Representatives of the department shall attend each meeting. Every act of the majority of the members of the council shall be deemed to be the act of the council.

(5) No member of the council shall receive any compensation, but each member shall be entitled, while serving on the business of the council, to receive his or her travel and other necessary expenses while so serving away from his or her place of residence as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1976, LB 821, § 11; Laws 1989, LB 344, § 32; Laws 1996, LB 1044, § 719; Laws 1997, LB 622, § 110; Laws 2001, LB 667, § 42; Laws 2007, LB296, § 618; Laws 2007, LB463, § 1229.

**71-5311.01 Compliance not dependent on funding.**

The failure or inability of any public water system to receive funds under the Drinking Water State Revolving Fund Act or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with the Nebraska Safe Drinking Water Act and rules and regulations adopted and promulgated under the act.

**Source:** Laws 1997, LB 517, § 22; Laws 2001, LB 667, § 43.

**Cross References**

Drinking Water State Revolving Fund Act, see section 71-5314.

**71-5311.02 Voluntary compliance.**

The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

**Source:** Laws 1997, LB 517, § 23; Laws 2007, LB296, § 619.

**71-5312 Violations; penalty; county attorney or Attorney General; action to assure compliance.**

Any person who shall violate any of the provisions of sections 71-5301 to 71-5313 shall be guilty of a Class IV misdemeanor and each day shall constitute a separate offense in cases of continued violation. It shall be the duty of the county attorney or the Attorney General, to whom the director reports a violation, to cause appropriate proceedings to be instituted without delay to assure compliance with sections 71-5301 to 71-5313.

**Source:** Laws 1976, LB 821, § 12; Laws 1977, LB 41, § 62.

**71-5312.01 Existing rules, regulations, certificates, forms of approval, suits, other proceedings; how treated.**

(1) All rules and regulations adopted prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All certificates or other forms of approval issued prior to December 1, 2008, in accordance with the Nebraska Safe Drinking Water Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

**Source:** Laws 2007, LB463, § 1230.

**71-5313 Act, how cited.**

Sections 71-5301 to 71-5313 shall be known and may be cited as the Nebraska Safe Drinking Water Act.

**Source:** Laws 1976, LB 821, § 13; Laws 1988, LB 383, § 10; Laws 1997, LB 517, § 24; Laws 2007, LB463, § 1231.

## (b) DRINKING WATER STATE REVOLVING FUND ACT

**71-5314 Act, how cited.**

Sections 71-5314 to 71-5327 shall be known and may be cited as the Drinking Water State Revolving Fund Act.

**Source:** Laws 1997, LB 517, § 3.

**71-5315 Legislative findings.**

The Legislature finds that safe drinking water is essential to the protection of public health. The Legislature further finds that the construction, rehabilitation, operation, and maintenance of modern and efficient public water systems and safe drinking water projects are essential to protecting and improving the quality of the state's drinking water, that protecting water quality is an issue of concern to all citizens of the state, and that adequate public water systems and safe drinking water projects are essential to public health and to economic growth and development. Systems need to have adequate technical, managerial, and financial capacities to assure that the public is protected. Needed assistance can be provided to systems through the funds created by the Drinking Water State Revolving Fund Act. The Legislature finds and determines that the funds should be available in perpetuity for providing financial assistance to such systems and for such projects.

The Legislature finds and determines that these funds will consist of both state money and federal grant funds. In addition, the funds can be increased and additional needed safe drinking water projects for owners of public water systems can be undertaken more expeditiously through the issuance of revenue bonds by the Nebraska Investment Finance Authority and the deposit of the proceeds thereof into the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for financing the funds serves a public purpose by assisting public water systems in providing and improving safe drinking water projects and thereby providing safe drinking water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

**Source:** Laws 1997, LB 517, § 4; Laws 2001, LB 667, § 44.

**71-5316 Terms, defined.**

For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as the act existed on May 22, 2001;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water systems; or the inspection or supervision of any of such items;

- (3) Council means the Environmental Quality Council;
- (4) Department means the Department of Environmental Quality;
- (5) Director means the Director of Environmental Quality;
- (6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water system in accordance with its intended purpose;
- (7) Owner means any person owning or operating a public water system;
- (8) Public water system has the definition found in section 71-5301; and
- (9) Safe drinking water project means the structures, equipment, surroundings, and processes required to establish and operate a public water system.

**Source:** Laws 1997, LB 517, § 5; Laws 2001, LB 667, § 45.

**71-5317 Federal grants; director; powers.**

The director may obligate and administer federal grants for construction of safe drinking water projects pursuant to the Safe Drinking Water Act.

**Source:** Laws 1997, LB 517, § 6.

**71-5318 Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment.**

(1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Public Health of the Division of Public Health, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (10), and (11) of section 71-5322. The annual obligation of the state pursuant to subdivisions (9) and (11) of section 71-5322 shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to section 71-5321 in the prior fiscal year.

The director may transfer any money in the Drinking Water Administration Fund to the Drinking Water Facilities Loan Fund to meet the state matching appropriation requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 71-5322.

**Source:** Laws 1997, LB 517, § 7; Laws 2001, LB 667, § 46; Laws 2007, LB80, § 1; Laws 2007, LB296, § 620.

## Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-5319 Repayment of loan or credit; effect.**

If funds are loaned to or otherwise credited to the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund with an obligation to repay such loan or credit, the obligation to repay the amount of the loan or credit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or credit, be a valid and binding obligation of such funds or either fund or portions thereof and payable in accordance with the terms of the agreement executed by the department.

**Source:** Laws 1997, LB 517, § 8.

**71-5320 Pledge; effect.**

Any pledge of the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund or any part thereof or any pledge of the assets of such funds made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and received by such funds shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against such funds or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

**Source:** Laws 1997, LB 517, § 9.

**71-5321 Council; powers and duties.**

The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern eligible systems and application procedures and requirements for making loans under the Drinking Water State Revolving Fund Act;

(2) The power to adopt an intended use plan which shall include the funding priorities established in subsection (6) of section 71-5302. This intended use plan shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system may allow discounted interest rates for short-term loans or for serious financial hardship. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(4) The power to approve criteria for defining disadvantaged communities;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Drinking Water State Revolving Fund Act; and

(6) Except as limited by section 71-5318, the power to obligate the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to



or credits into such funds, including bonds, the proceeds of which are credited to such funds.

**Source:** Laws 1997, LB 517, § 10.

**71-5322 Department; powers and duties.**

The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the funds;

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to develop an intended use plan, in consultation with the Director of Public Health of the Division of Public Health, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act;

(9) The power to enter into agreements for the purpose of providing loan forgiveness concurrent with loans to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to one-half of the eligible project cost. Such agreements shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to provide emergency funding to public water systems operated by political subdivisions with drinking water facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such funding shall not be used for routine repair or maintenance of facilities;

(11) The power to provide financial assistance consistent with the intended use plan, described in subdivision (7) of this section, for completion of engineering studies, research projects to investigate low-cost options for achieving compliance with safe drinking water standards, preliminary engineering reports, regional water system planning, source water protection, and other studies for the purpose of enhancing the ability of communities to meet the requirements of the Safe Drinking Water Act, to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to ninety percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(12) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

**Source:** Laws 1997, LB 517, § 11; Laws 2001, LB 667, § 47; Laws 2007, LB80, § 2; Laws 2007, LB296, § 621; Laws 2012, LB782, § 122; Laws 2017, LB182, § 1.

**71-5323 Loans; eligibility.**

Loans shall be made only to owners of eligible systems for eligible projects pursuant to the Safe Drinking Water Act.

**Source:** Laws 1997, LB 517, § 12.

**71-5324 Loans; requirements.**

(1) All loans made under the Drinking Water State Revolving Fund Act shall be made only to owners of public water systems that:

(a) Meet the requirements of financial, technical, and managerial capability set by the department;

(b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

(c) In the case of a privately owned public water system, pledge sufficient revenue, collateral, or other security for the repayment of the loan;

(d) Agree to maintain financial records according to generally accepted government accounting principles and to conduct an audit of the financial records according to generally accepted government auditing standards; and

(e) Provide a written assurance, signed by an attorney holding an active license to practice in the State of Nebraska, that the recipient has proper title, easements, and rights-of-way to the property on or through which the safe drinking water project is to be constructed or extended.

(2) Loans made for the construction of a safe drinking water project shall be made only to owners of public water systems which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Require the contractor of the project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(b) Provide a written notice of completion and start of operation of the safe drinking water project;

(c) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services; and

(d) Agree to operate and maintain the safe drinking water project so that it will function properly over the structural and material design life.

**Source:** Laws 1997, LB 517, § 13; Laws 2001, LB 667, § 48.

**71-5325 Loan terms.**

Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years, except for systems serving disadvantaged communities which term may not exceed thirty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

**Source:** Laws 1997, LB 517, § 14.

**71-5326 Repealed. Laws 2011, LB 383, § 9.**

**71-5327 Reserves authorized.**

At any time after the first year the fund is effective and prior to federal fiscal year 2002 the state may: (1) Reserve up to thirty-three percent of a capitalization grant made pursuant to section 1452 of the federal Safe Drinking Water Act and add the funds reserved to any funds provided to the state pursuant to section 601 of the federal Water Pollution Control Act; and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under subdivision (1) of this section from the capitalization grants made pursuant to section 601 of the federal Water Pollution Control Act and add the reserved funds to any funds provided to the state pursuant to section 1452 of the federal Safe Drinking Water Act.

**Source:** Laws 1997, LB 517, § 16.

**ARTICLE 54**

**DRUG PRODUCT SELECTION**

**Cross References**

**Automated Medication Systems Act**, see section 71-2444.  
**Pharmacy Practice Act**, see section 38-2801.

Section  
 71-5401. Repealed. Laws 2003, LB 667, § 26.  
 71-5401.01. Transferred to section 38-28,108.  
 71-5401.02. Transferred to section 38-28,109.  
 71-5402. Transferred to section 38-28,110.  
 71-5403. Transferred to section 38-28,111.

**§ 71-5401**

**PUBLIC HEALTH AND WELFARE**

Section

- 71-5404. Transferred to section 38-28,112.
- 71-5405. Transferred to section 38-28,113.
- 71-5406. Transferred to section 38-28,114.
- 71-5407. Transferred to section 38-28,115.
- 71-5408. Transferred to section 71-5401.01.
- 71-5409. Transferred to section 38-28,116.

**71-5401 Repealed. Laws 2003, LB 667, § 26.**

**71-5401.01 Transferred to section 38-28,108.**

**71-5401.02 Transferred to section 38-28,109.**

**71-5402 Transferred to section 38-28,110.**

**71-5403 Transferred to section 38-28,111.**

**71-5404 Transferred to section 38-28,112.**

**71-5405 Transferred to section 38-28,113.**

**71-5406 Transferred to section 38-28,114.**

**71-5407 Transferred to section 38-28,115.**

**71-5408 Transferred to section 71-5401.01.**

**71-5409 Transferred to section 38-28,116.**

**ARTICLE 55**

**EMERGENCY MEDICAL CARE**

Section

- 71-5501. Repealed. Laws 1997, LB 138, § 57.
- 71-5501.01. Repealed. Laws 1997, LB 138, § 57.
- 71-5502. Repealed. Laws 1997, LB 138, § 57.
- 71-5503. Repealed. Laws 1997, LB 138, § 57.
- 71-5504. Repealed. Laws 1997, LB 138, § 57.
- 71-5505. Repealed. Laws 1997, LB 138, § 57.
- 71-5505.01. Repealed. Laws 1997, LB 138, § 57.
- 71-5506. Repealed. Laws 1997, LB 138, § 57.
- 71-5507. Repealed. Laws 1997, LB 138, § 57.
- 71-5507.01. Repealed. Laws 1997, LB 138, § 57.
- 71-5508. Repealed. Laws 1997, LB 138, § 57.
- 71-5509. Repealed. Laws 1997, LB 138, § 57.
- 71-5510. Repealed. Laws 1997, LB 138, § 57.
- 71-5511. Repealed. Laws 1997, LB 138, § 57.
- 71-5512. Repealed. Laws 1997, LB 138, § 57.
- 71-5513. Repealed. Laws 1997, LB 138, § 57.
- 71-5514. Repealed. Laws 1997, LB 138, § 57.
- 71-5514.01. Repealed. Laws 1997, LB 138, § 57.
- 71-5514.02. Repealed. Laws 1997, LB 138, § 57.
- 71-5515. Repealed. Laws 1997, LB 138, § 57.
- 71-5515.01. Repealed. Laws 1997, LB 138, § 57.
- 71-5516. Repealed. Laws 1997, LB 138, § 57.
- 71-5517. Repealed. Laws 1997, LB 138, § 57.
- 71-5518. Repealed. Laws 1997, LB 138, § 57.
- 71-5519. Transferred to section 71-5501.01.
- 71-5520. Repealed. Laws 1997, LB 138, § 57.
- 71-5521. Repealed. Laws 1997, LB 138, § 57.

## Section

- 71-5521.01. Repealed. Laws 1997, LB 138, § 57.  
71-5522. Transferred to section 71-5514.01.  
71-5523. Repealed. Laws 1997, LB 138, § 57.

**71-5501 Repealed. Laws 1997, LB 138, § 57.**

**71-5501.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5502 Repealed. Laws 1997, LB 138, § 57.**

**71-5503 Repealed. Laws 1997, LB 138, § 57.**

**71-5504 Repealed. Laws 1997, LB 138, § 57.**

**71-5505 Repealed. Laws 1997, LB 138, § 57.**

**71-5505.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5506 Repealed. Laws 1997, LB 138, § 57.**

**71-5507 Repealed. Laws 1997, LB 138, § 57.**

**71-5507.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5508 Repealed. Laws 1997, LB 138, § 57.**

**71-5509 Repealed. Laws 1997, LB 138, § 57.**

**71-5510 Repealed. Laws 1997, LB 138, § 57.**

**71-5511 Repealed. Laws 1997, LB 138, § 57.**

**71-5512 Repealed. Laws 1997, LB 138, § 57.**

**71-5513 Repealed. Laws 1997, LB 138, § 57.**

**71-5514 Repealed. Laws 1997, LB 138, § 57.**

**71-5514.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5514.02 Repealed. Laws 1997, LB 138, § 57.**

**71-5515 Repealed. Laws 1997, LB 138, § 57.**

**71-5515.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5516 Repealed. Laws 1997, LB 138, § 57.**

**71-5517 Repealed. Laws 1997, LB 138, § 57.**

**71-5518 Repealed. Laws 1997, LB 138, § 57.**

**71-5519 Transferred to section 71-5501.01.**

**71-5520 Repealed. Laws 1997, LB 138, § 57.**

**71-5521 Repealed. Laws 1997, LB 138, § 57.**

**71-5521.01 Repealed. Laws 1997, LB 138, § 57.**

**71-5522 Transferred to section 71-5514.01.**

**71-5523 Repealed. Laws 1997, LB 138, § 57.**

**ARTICLE 56  
RURAL HEALTH**

Cross References

Primary Care Provider Act, see section 71-5210.

(a) COMMISSION ON RURAL HEALTH MANPOWER

Section

- 71-5601. Repealed. Laws 1991, LB 400, § 26.
- 71-5602. Repealed. Laws 1991, LB 400, § 26.
- 71-5603. Repealed. Laws 1991, LB 400, § 26.
- 71-5604. Repealed. Laws 1991, LB 400, § 26.
- 71-5605. Repealed. Laws 1991, LB 400, § 26.
- 71-5606. Repealed. Laws 1991, LB 400, § 26.
- 71-5607. Repealed. Laws 1991, LB 400, § 26.
- 71-5608. Repealed. Laws 1991, LB 400, § 26.
- 71-5609. Repealed. Laws 1991, LB 400, § 26.
- 71-5610. Repealed. Laws 1991, LB 400, § 26.
- 71-5611. Repealed. Laws 1991, LB 400, § 26.
- 71-5612. Repealed. Laws 1991, LB 400, § 26.

(b) NEBRASKA MEDICAL STUDENT ASSISTANCE ACT

- 71-5613. Repealed. Laws 1991, LB 400, § 26.
- 71-5614. Repealed. Laws 1991, LB 400, § 26.
- 71-5615. Repealed. Laws 1991, LB 400, § 26.
- 71-5616. Repealed. Laws 1991, LB 400, § 26.
- 71-5617. Repealed. Laws 1991, LB 400, § 26.
- 71-5618. Repealed. Laws 1991, LB 400, § 26.
- 71-5619. Repealed. Laws 1991, LB 400, § 26.
- 71-5620. Repealed. Laws 1991, LB 400, § 26.
- 71-5621. Repealed. Laws 1991, LB 400, § 26.
- 71-5622. Repealed. Laws 1991, LB 400, § 26.
- 71-5623. Repealed. Laws 1991, LB 400, § 26.
- 71-5624. Repealed. Laws 1979, LB 506, § 17.
- 71-5625. Repealed. Laws 1991, LB 400, § 26.
- 71-5626. Repealed. Laws 1991, LB 400, § 26.
- 71-5627. Repealed. Laws 1991, LB 400, § 26.
- 71-5628. Repealed. Laws 1991, LB 400, § 26.
- 71-5629. Repealed. Laws 1991, LB 400, § 26.
- 71-5630. Repealed. Laws 1991, LB 400, § 26.
- 71-5631. Repealed. Laws 1991, LB 400, § 26.
- 71-5632. Repealed. Laws 1979, LB 506, § 17.
- 71-5632.01. Repealed. Laws 1991, LB 400, § 26.
- 71-5633. Repealed. Laws 1991, LB 400, § 26.
- 71-5634. Repealed. Laws 1991, LB 400, § 26.
- 71-5635. Repealed. Laws 1991, LB 400, § 26.
- 71-5636. Repealed. Laws 1991, LB 400, § 26.
- 71-5637. Repealed. Laws 1979, LB 506, § 17.
- 71-5638. Repealed. Laws 1979, LB 506, § 17.
- 71-5639. Repealed. Laws 1991, LB 400, § 26.
- 71-5640. Repealed. Laws 1991, LB 400, § 26.
- 71-5641. Repealed. Laws 1991, LB 400, § 26.
- 71-5642. Repealed. Laws 1991, LB 400, § 26.
- 71-5643. Repealed. Laws 1991, LB 400, § 26.
- 71-5643.01. Repealed. Laws 1991, LB 400, § 26.
- 71-5644. Repealed. Laws 1991, LB 400, § 26.
- 71-5645. Repealed. Laws 1991, LB 400, § 26.

## Section

## (c) OFFICE OF RURAL HEALTH

- 71-5646. Legislative findings.
- 71-5647. Office of Rural Health; created; powers and duties.
- 71-5648. Repealed. Laws 1991, LB 400, § 26.
- 71-5649. Legislative appropriation.

## (d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

- 71-5650. Rural Health Systems and Professional Incentive Act; act, how cited.
- 71-5651. Legislative findings.
- 71-5652. Purposes of act.
- 71-5653. Terms, defined.
- 71-5654. Nebraska Rural Health Advisory Commission; created; members; appointment; terms.
- 71-5655. Commission; purpose.
- 71-5656. Commission; officers.
- 71-5657. Commission members; expenses.
- 71-5658. Commission; meetings; quorum.
- 71-5659. Commission; powers and duties.
- 71-5660. Act; how administered.
- 71-5661. Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.
- 71-5662. Student loan; medical resident incentive; loan repayment; eligibility.
- 71-5663. Amount of financial assistance; limitation.
- 71-5664. Financial incentives; commission; considerations.
- 71-5665. Commission; designate health profession shortage areas; factors.
- 71-5666. Student loan recipient agreement; contents.
- 71-5667. Agreements under prior law; renegotiation.
- 71-5668. Loan repayment recipient agreement; contents.
- 71-5669. Loan repayment program; office; duties.
- 71-5669.01. Medical resident incentive recipient; agreement; contents.
- 71-5670. Department; rules and regulations.
- 71-5670.01. Rural Health Opportunities Loan Pool Fund; transfers.

## (e) RURAL HEALTH OPPORTUNITIES LOAN ACT

- 71-5671. Repealed. Laws 1999, LB 242, § 4.
- 71-5672. Repealed. Laws 1999, LB 242, § 4.
- 71-5673. Repealed. Laws 1999, LB 242, § 4.
- 71-5674. Repealed. Laws 1999, LB 242, § 4.
- 71-5675. Repealed. Laws 1999, LB 242, § 4.
- 71-5676. Repealed. Laws 1999, LB 242, § 4.
- 71-5677. Repealed. Laws 1999, LB 242, § 4.
- 71-5678. Repealed. Laws 1999, LB 242, § 4.
- 71-5679. Repealed. Laws 1999, LB 242, § 4.

## (f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT

- 71-5680. Rural Behavioral Health Training and Placement Program Act; act, how cited.
- 71-5681. Legislative findings and declarations.
- 71-5682. Rural Behavioral Health Training and Placement Program; created.
- 71-5683. Funding under act; use.

## (a) COMMISSION ON RURAL HEALTH MANPOWER

**71-5601 Repealed. Laws 1991, LB 400, § 26.**

**71-5602 Repealed. Laws 1991, LB 400, § 26.**

**71-5603 Repealed. Laws 1991, LB 400, § 26.**

**71-5604 Repealed. Laws 1991, LB 400, § 26.**

71-5605 Repealed. Laws 1991, LB 400, § 26.

71-5606 Repealed. Laws 1991, LB 400, § 26.

71-5607 Repealed. Laws 1991, LB 400, § 26.

71-5608 Repealed. Laws 1991, LB 400, § 26.

71-5609 Repealed. Laws 1991, LB 400, § 26.

71-5610 Repealed. Laws 1991, LB 400, § 26.

71-5611 Repealed. Laws 1991, LB 400, § 26.

71-5612 Repealed. Laws 1991, LB 400, § 26.

(b) NEBRASKA MEDICAL STUDENT ASSISTANCE ACT

71-5613 Repealed. Laws 1991, LB 400, § 26.

71-5614 Repealed. Laws 1991, LB 400, § 26.

71-5615 Repealed. Laws 1991, LB 400, § 26.

71-5616 Repealed. Laws 1991, LB 400, § 26.

71-5617 Repealed. Laws 1991, LB 400, § 26.

71-5618 Repealed. Laws 1991, LB 400, § 26.

71-5619 Repealed. Laws 1991, LB 400, § 26.

71-5620 Repealed. Laws 1991, LB 400, § 26.

71-5621 Repealed. Laws 1991, LB 400, § 26.

71-5622 Repealed. Laws 1991, LB 400, § 26.

71-5623 Repealed. Laws 1991, LB 400, § 26.

71-5624 Repealed. Laws 1979, LB 506, § 17.

71-5625 Repealed. Laws 1991, LB 400, § 26.

71-5626 Repealed. Laws 1991, LB 400, § 26.

71-5627 Repealed. Laws 1991, LB 400, § 26.

71-5628 Repealed. Laws 1991, LB 400, § 26.

71-5629 Repealed. Laws 1991, LB 400, § 26.

71-5630 Repealed. Laws 1991, LB 400, § 26.

71-5631 Repealed. Laws 1991, LB 400, § 26.

71-5632 Repealed. Laws 1979, LB 506, § 17.

71-5632.01 Repealed. Laws 1991, LB 400, § 26.

71-5633 Repealed. Laws 1991, LB 400, § 26.



**71-5634 Repealed. Laws 1991, LB 400, § 26.**

**71-5635 Repealed. Laws 1991, LB 400, § 26.**

**71-5636 Repealed. Laws 1991, LB 400, § 26.**

**71-5637 Repealed. Laws 1979, LB 506, § 17.**

**71-5638 Repealed. Laws 1979, LB 506, § 17.**

**71-5639 Repealed. Laws 1991, LB 400, § 26.**

**71-5640 Repealed. Laws 1991, LB 400, § 26.**

**71-5641 Repealed. Laws 1991, LB 400, § 26.**

**71-5642 Repealed. Laws 1991, LB 400, § 26.**

**71-5643 Repealed. Laws 1991, LB 400, § 26.**

**71-5643.01 Repealed. Laws 1991, LB 400, § 26.**

**71-5644 Repealed. Laws 1991, LB 400, § 26.**

**71-5645 Repealed. Laws 1991, LB 400, § 26.**

(c) OFFICE OF RURAL HEALTH

**71-5646 Legislative findings.**

The Legislature finds and recognizes that rural health care is in the process of transition. Many rural communities are finding it difficult to recruit and retain health care professionals, to keep hospitals open, and to provide quality care to their residents. Although recent national rankings show that Nebraskans are among the healthiest in the nation, continued stress on our rural health care system could leave areas of the state without adequate health care services.

The Legislature further finds that rural health care issues will be best addressed through a comprehensive approach that emphasizes two principles. First, rural health care problems are seldom isolated in their causes or effects. Second, rural health care problems are most effectively resolved by residents of the area involved and state strategies should focus on assisting those residents to develop and implement their own solutions to such problems.

**Source:** Laws 1990, LB 994, § 1.

**71-5647 Office of Rural Health; created; powers and duties.**

The Office of Rural Health is hereby created within the Department of Health and Human Services. The office shall have the following powers and duties:

(1) To assist rural residents in obtaining high quality health care which includes the following:

(a) Assist in the recruitment and retention of health care professionals to rural areas, including specifically physicians and nurses;

(b) Assist rural communities in maintaining the viability of hospital services whenever feasible or, for communities in transition, in developing alternative systems to provide equivalent quality care to their residents;

(c) Assist rural communities in planning to meet changes needed due to the changing rural economy and demographics or new technology;

(d) Assist in the development of health care networks or cooperative ventures among rural communities or health care providers;

(e) Assist in promoting or developing demonstration projects to identify and establish alternative health care systems; and

(f) Assist rural communities in developing and identifying leaders and leadership skills among their residents to enable such communities to work toward appropriate and cost-effective solutions to the health care issues that confront them;

(2) To develop a comprehensive rural health policy to serve as a guide for the development of programs of the department aimed at improving health care in rural Nebraska and a rural health action plan to guide implementation of the policy;

(3) To establish liaison with other state agency efforts in the area of rural development and human services delivery to ensure that the programs of the office are appropriately coordinated with these efforts and to encourage use of the comprehensive rural health policy by other agencies as a guide to their plans and programs affecting rural health;

(4) To develop and maintain an appropriate data system to identify present and potential rural health issues and to evaluate the effectiveness of programs and demonstration projects;

(5) To encourage and facilitate increased public awareness of issues affecting rural health care;

(6) To carry out its duties under the Rural Health Systems and Professional Incentive Act;

(7) To carry out the duties required by section 71-5206.01; and

(8) To carry out related duties as directed by the Department of Health and Human Services.

**Source:** Laws 1990, LB 994, § 2; Laws 1991, LB 400, § 23; Laws 1993, LB 152, § 5; Laws 1996, LB 1044, § 725; Laws 1998, LB 1073, § 151; Laws 2005, LB 301, § 52; Laws 2007, LB296, § 623.

**Cross References**

**Rural Health Systems and Professional Incentive Act**, see section 71-5650.

**71-5648 Repealed. Laws 1991, LB 400, § 26.**

**71-5649 Legislative appropriation.**

The Legislature shall appropriate sufficient funds to the Department of Health and Human Services to enable the Office of Rural Health to carry out its duties pursuant to section 71-5647.

**Source:** Laws 1990, LB 994, § 4; Laws 1991, LB 400, § 24; Laws 1996, LB 1044, § 726; Laws 1998, LB 1073, § 152; Laws 2005, LB 301, § 53; Laws 2007, LB296, § 624.

(d) **RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT**

**71-5650 Rural Health Systems and Professional Incentive Act; act, how cited.**

Sections 71-5650 to 71-5670 shall be known and may be cited as the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1991, LB 400, § 1; Laws 2015, LB196, § 1.

**71-5651 Legislative findings.**

(1) The Legislature finds that (a) residents of rural Nebraska frequently encounter difficulties in obtaining medical care due to the lack of health care providers, facilities, and services, (b) many rural communities experience problems in recruiting and retaining health care providers, (c) rural residents are often required to travel long distances in order to obtain health care services, (d) elderly and uninsured persons constitute a high proportion of the population in rural Nebraska, (e) many rural hospitals are experiencing declining patient revenue and are being forced to reconsider the scope and nature of the health care services they provide, (f) the physical and economic stresses of rural living can lead to an increased need for mental health services in rural Nebraska, (g) the conditions described in this section can lead to situations in which residents of rural Nebraska receive a lower level of health care services than their urban counterparts, and (h) some of the conditions described in this subsection also exist in underserved portions of metropolitan areas within the state.

(2) The Legislature further finds that the health care industry is a vital component of the economic base of many rural communities and that the maintenance and enhancement of this industry can play a significant role in efforts to further the economic development of rural communities.

(3) The Legislature further finds that the inherent limitations imposed upon health care delivery mechanisms by the rural environment can be partially overcome through a greater emphasis on the development of health care systems that emphasize the linkage and integration of health care resources in neighboring communities as well as the development of new resources.

(4) The Legislature further finds that postsecondary education of medical, dental, and mental health professionals is important to the welfare of the state. The Legislature further recognizes and declares that the state can help alleviate the problems of maldistribution and shortages of medical, dental, and mental health personnel through programs offering financial incentives to practice in areas of shortage.

**Source:** Laws 1991, LB 400, § 2; Laws 2004, LB 1005, § 99.

**71-5652 Purposes of act.**

The purposes of the Rural Health Systems and Professional Incentive Act are to (1) create the Nebraska Rural Health Advisory Commission and establish its powers and duties, (2) establish a student loan program that will provide financial incentives to medical, dental, master's level and doctorate-level mental health, and physician assistant students who agree to practice their profession in a designated health profession shortage area within Nebraska, (3) establish a loan repayment program that will provide financial incentives to medical residents who agree to practice their profession in a designated health profession shortage area within Nebraska, and (4) establish a loan repayment program that will require community matching funds and will provide financial

incentives to eligible health professionals who agree to practice their profession in a designated health profession shortage area within Nebraska.

**Source:** Laws 1991, LB 400, § 3; Laws 1994, LB 1223, § 55; Laws 1996, LB 1155, § 47; Laws 2000, LB 1115, § 79; Laws 2004, LB 1005, § 100; Laws 2015, LB196, § 2.

**71-5653 Terms, defined.**

For purposes of the Rural Health Systems and Professional Incentive Act:

(1) Approved medical specialty means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry;

(2) Approved dental specialty means general practice, pediatric dentistry, and oral surgery;

(3) Approved mental health practice program means an approved educational program consisting of a master's or doctorate degree with the focus being primarily therapeutic mental health and meeting the educational requirements for licensure in mental health practice or psychology by the department;

(4) Commission means the Nebraska Rural Health Advisory Commission;

(5) Department means the Division of Public Health of the Department of Health and Human Services;

(6) Doctorate-level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a doctorate degree and meeting the educational requirements for licensure in psychology by the department;

(7) Full-time practice means a minimum of forty hours per week;

(8) Health care means both somatic and mental health care services;

(9) Master's level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a master's degree and meeting the educational requirements for licensure in mental health practice by the department;

(10) Office means the Office of Rural Health;

(11) Part-time practice means less than full-time practice but at least twenty hours per week;

(12) Qualified educational debts means government and commercial student-loan loans obtained by students for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the department, but does not include loans received under the act; and

(13) Rural means located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1991, LB 400, § 4; Laws 1992, LB 573, § 10; Laws 1994, LB 1223, § 56; Laws 1996, LB 1044, § 727; Laws 1996, LB 1155, § 48; Laws 1998, LB 1073, § 153; Laws 2000, LB 1115, § 80; Laws 2004, LB 1005, § 101; Laws 2005, LB 301, § 54; Laws 2007, LB296, § 625; Laws 2015, LB196, § 3.

**71-5654 Nebraska Rural Health Advisory Commission; created; members; appointment; terms.**

The Nebraska Rural Health Advisory Commission is hereby created as the direct and only successor to the Commission on Rural Health Manpower. The Nebraska Rural Health Advisory Commission shall consist of thirteen members as follows:

(1) The Director of Public Health of the Division of Public Health or his or her designee and another representative of the Department of Health and Human Services; and

(2) Eleven members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(a) One representative of each medical school located in the state involved in training family physicians and one physician in family practice residency training; and

(b) From rural areas one physician, one consumer representative, one hospital administrator, one nursing home administrator, one nurse, one physician assistant, one mental health practitioner or psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, and one dentist.

Members shall serve for terms of three years. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. All appointed members shall be citizens and residents of Nebraska. The appointed membership of the commission shall, to the extent possible, represent the three congressional districts equally.

**Source:** Laws 1991, LB 400, § 5; Laws 1996, LB 1044, § 728; Laws 1996, LB 1155, § 49; Laws 1997, LB 577, § 1; Laws 2001, LB 411, § 1; Laws 2004, LB 1005, § 102; Laws 2007, LB296, § 626; Laws 2007, LB463, § 1233.

**71-5655 Commission; purpose.**

The purpose of the commission shall be to advise the department, the Legislature, the Governor, the University of Nebraska, and the citizens of Nebraska regarding all aspects of rural health care and to advise the office regarding the administration of the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1991, LB 400, § 6; Laws 1996, LB 1044, § 729; Laws 1998, LB 1073, § 154; Laws 2005, LB 301, § 55; Laws 2007, LB296, § 627.

**71-5656 Commission; officers.**

The commission shall annually elect from among its members a chairperson and a vice-chairperson. The commission shall receive assistance from the staff of the office.

**Source:** Laws 1991, LB 400, § 7; Laws 1996, LB 1044, § 730; Laws 1998, LB 1073, § 155.

**71-5657 Commission members; expenses.**

Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 from funds appropriated for the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1991, LB 400, § 8.

**71-5658 Commission; meetings; quorum.**

The commission shall hold at least four meetings a year, at times and places fixed by the commission. At least one meeting each year shall be held at a site other than Lincoln or Omaha. A majority of the members of the commission shall constitute a quorum.

**Source:** Laws 1991, LB 400, § 9.

**71-5659 Commission; powers and duties.**

The commission shall have the following powers and duties:

(1) Advise the department regarding the development and implementation of a state rural health policy;

(2) Advise the department and other appropriate parties in all matters relating to rural health care;

(3) Serve as an advocate for rural Nebraska in health care issues;

(4) Maintain liaison with all agencies, groups, and organizations concerned with rural health care in order to facilitate integration of efforts and commonality of goals;

(5) Identify problems in the delivery of health care in rural Nebraska, in the education and training of health care providers in rural Nebraska, in the regulation of health care providers and institutions in rural Nebraska, and in any other matters relating to rural health care;

(6) Prepare recommendations to the appropriate bodies to alleviate the problems identified;

(7) Advise the department regarding the Rural Health Systems and Professional Incentive Act;

(8) Designate health profession shortage areas in Nebraska; and

(9) Select recipients of financial incentives available under the act.

**Source:** Laws 1991, LB 400, § 10; Laws 1994, LB 1223, § 57.

**71-5660 Act; how administered.**

The Rural Health Systems and Professional Incentive Act shall be administered by the office with the advice and consultation of the commission.

**Source:** Laws 1991, LB 400, § 11.

**71-5661 Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.**

(1) The financial incentives provided by the Rural Health Systems and Professional Incentive Act shall consist of (a) student loans to eligible students for attendance at an eligible school as determined pursuant to section 71-5662, (b) the repayment of qualified educational debts owed by physicians in an approved medical specialty residency program in Nebraska as determined pursuant to section 71-5662, and (c) the repayment of qualified educational

debts owed by eligible health professionals as determined pursuant to section 71-5662. Funds for such incentives shall be appropriated from the General Fund to the department for such purposes.

(2) The Rural Health Professional Incentive Fund is created. The fund shall be used to carry out the purposes of the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Money credited pursuant to section 71-5670.01 and payments received pursuant to sections 71-5666, 71-5668, and 71-5669.01 shall be remitted to the State Treasurer for credit to the Rural Health Professional Incentive Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1991, LB 400, § 12; Laws 1994, LB 1223, § 58; Laws 1995, LB 7, § 79; Laws 1996, LB 1155, § 50; Laws 1999, LB 242, § 1; Laws 2001, LB 214, § 3; Laws 2004, LB 1005, § 103; Laws 2009, First Spec. Sess., LB3, § 46; Laws 2015, LB196, § 4.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

#### **71-5662 Student loan; medical resident incentive; loan repayment; eligibility.**

(1) To be eligible for a student loan under the Rural Health Systems and Professional Incentive Act, an applicant or a recipient shall be enrolled or accepted for enrollment in an accredited medical or dental education program or physician assistant education program or an approved mental health practice program in Nebraska.

(2) To be eligible for the medical resident incentive under the act, an applicant or a recipient shall be enrolled or accepted for enrollment in an approved medical specialty residency program in Nebraska.

(3) To be eligible for loan repayment under the act, an applicant or a recipient shall be a pharmacist, a dentist, a physical therapist, an occupational therapist, a mental health practitioner, a psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, a nurse practitioner, a physician assistant, or a physician in an approved specialty and shall be licensed to practice in Nebraska, not be enrolled in a residency program, not be practicing under a provisional or temporary license, and enter practice in a designated health profession shortage area in Nebraska.

**Source:** Laws 1991, LB 400, § 13; Laws 1994, LB 1223, § 59; Laws 1996, LB 1155, § 51; Laws 1997, LB 577, § 2; Laws 2000, LB 1115, § 81; Laws 2004, LB 1005, § 104; Laws 2007, LB463, § 1234; Laws 2008, LB797, § 19; Laws 2015, LB196, § 5.

#### **71-5663 Amount of financial assistance; limitation.**

(1) The amount of financial assistance provided through student loans pursuant to the Rural Health Systems and Professional Incentive Act shall be limited to thirty thousand dollars for each recipient for each academic year and shall not exceed one hundred twenty thousand dollars per medical, dental, or doctorate-level mental health student or thirty thousand dollars per master's level mental health or physician assistant student.

(2) The amount of financial assistance provided through the medical resident incentive program pursuant to the act shall be limited to forty thousand dollars for each recipient for each year of residency and shall not exceed one hundred twenty thousand dollars.

(3) The amount of financial assistance provided by the state through loan repayments pursuant to the act (a) for physicians, dentists, and psychologists shall be limited to thirty thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed ninety thousand dollars per recipient and (b) for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners shall be limited to fifteen thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed forty-five thousand dollars per recipient.

**Source:** Laws 1991, LB 400, § 14; Laws 1994, LB 1223, § 60; Laws 1997, LB 577, § 3; Laws 2000, LB 1115, § 82; Laws 2004, LB 1005, § 105; Laws 2006, LB 962, § 2; Laws 2008, LB797, § 20; Laws 2015, LB196, § 6.

**71-5664 Financial incentives; commission; considerations.**

In screening applicants for financial incentives, the commission shall consider the following factors:

- (1) Motivation to practice in a health profession shortage area in Nebraska;
- (2) Motivation and preference toward an approved specialty; and
- (3) Other factors that would influence a choice to practice in a health profession shortage area in Nebraska.

The commission shall select recipients who are most likely to practice in a health profession shortage area in Nebraska.

**Source:** Laws 1991, LB 400, § 15; Laws 1994, LB 1223, § 61; Laws 1996, LB 1155, § 52.

**71-5665 Commission; designate health profession shortage areas; factors.**

The commission shall periodically designate health profession shortage areas within the state for the following professions: Medicine and surgery, physician assistants' practice, nurse practitioners' practice, psychology, and mental health practitioner's practice. The commission shall also periodically designate separate health profession shortage areas for each of the following professions: Pharmacy, dentistry, physical therapy, and occupational therapy. In making such designations the commission shall consider, after consultation with other appropriate agencies concerned with health services and with appropriate professional organizations, among other factors:

- (1) The latest reliable statistical data available regarding the number of health professionals practicing in an area and the population to be served by such practitioners;
- (2) Inaccessibility of health care services to residents of an area;
- (3) Particular local health problems;
- (4) Age or incapacity of local practitioners rendering services; and



(5) Demographic trends in an area both past and future.

**Source:** Laws 1991, LB 400, § 16; Laws 1994, LB 1223, § 62; Laws 1996, LB 1155, § 53; Laws 1997, LB 577, § 4; Laws 2000, LB 1115, § 83; Laws 2004, LB 1005, § 106; Laws 2008, LB797, § 21.

**71-5666 Student loan recipient agreement; contents.**

Each student loan recipient shall execute an agreement with the state. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and shall include the following terms, as appropriate:

(1) The borrower agrees to practice the equivalent of one year of full-time practice of an approved specialty in a designated health profession shortage area in Nebraska for each year of education for which a loan is received and agrees to accept medicaid patients in his or her practice;

(2) If the borrower practices an approved specialty in a designated health profession shortage area in Nebraska, the loan shall be forgiven as provided in this section. Practice in a designated area shall commence within three months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty. The commission may approve exceptions to any period required for completion of training upon showing good cause. Loan forgiveness shall occur on a quarterly basis, with completion of the equivalent of three months of full-time practice resulting in the cancellation of one-fourth of the annual loan amount. Part-time practice in a shortage area shall result in a prorated reduction in the cancellation of the loan amount;

(3) If the borrower practices an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than an approved specialty in Nebraska, does not practice the profession for which the loan was given, discontinues practice of the profession for which the loan was given, or practices outside Nebraska, the borrower shall repay one hundred fifty percent of the outstanding loan principal with interest at a rate of eight percent simple interest per year from the date of default. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(4) If a borrower who is a medical, dental, or doctorate-level mental health student determines during the first or second year of medical, dental, or doctorate-level mental health education that his or her commitment to the loan program cannot be honored, the borrower may repay the outstanding loan principal, plus six percent simple interest per year from the date the loan was granted, prior to graduation from medical or dental school or a mental health practice program without further penalty or obligation. Master's level mental health and physician assistant student loan recipients shall not be eligible for this provision;

(5) If the borrower discontinues the course of study for which the loan was granted, the borrower shall repay one hundred percent of the outstanding loan principal. Such repayment shall commence within six months of the date of discontinuation of the course of study and shall be completed within a period of time not to exceed the number of years for which loans were awarded; and

(6) Any practice or payment obligation incurred by the student loan recipient under the student loan program is canceled in the event of the student loan recipient's total and permanent disability or death.

**Source:** Laws 1991, LB 400, § 17; Laws 1994, LB 1223, § 63; Laws 1996, LB 1155, § 54; Laws 2001, LB 214, § 4; Laws 2004, LB 1005, § 107; Laws 2007, LB374, § 1; Laws 2009, LB196, § 1; Laws 2012, LB858, § 1; Laws 2015, LB196, § 7.

**71-5667 Agreements under prior law; renegotiation.**

Agreements executed prior to July 1, 2007, under the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to July 1, 2007, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit. Any agreement renegotiated pursuant to this section shall be exempt from the requirements of sections 73-501 to 73-510.

**Source:** Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2; Laws 2009, LB196, § 2; Laws 2012, LB858, § 2; Laws 2015, LB196, § 8.

**Note:** The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

**71-5668 Loan repayment recipient agreement; contents.**

Each loan repayment recipient shall execute an agreement with the department and a local entity. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice his or her profession, and a physician, dentist, nurse practitioner, or physician assistant also agrees to practice an approved specialty, in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts, in amounts up to thirty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to fifteen thousand dollars per year per recipient for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners toward qualified educational debts for up to three years. The department shall make payments directly to the recipient;

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred fifty percent of the total amount of funds provided to the recipient for loan repayment with interest at a rate of eight percent simple interest per year from the date of default. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds which shall not be more than the local entity's share paid to the loan repayment recipient; and

(4) Any practice or payment obligation incurred by the loan repayment recipient under the loan repayment program is canceled in the event of the loan repayment recipient's total and permanent disability or death.

**Source:** Laws 1991, LB 400, § 19; Laws 1993, LB 536, § 101; Laws 1994, LB 1223, § 64; Laws 1996, LB 1155, § 56; Laws 1997, LB 577, § 5; Laws 2000, LB 1115, § 84; Laws 2001, LB 214, § 5; Laws 2004, LB 1005, § 108; Laws 2006, LB 962, § 3; Laws 2008, LB797, § 22; Laws 2009, LB196, § 3; Laws 2012, LB858, § 3; Laws 2015, LB196, § 9.

#### **71-5669 Loan repayment program; office; duties.**

The office shall develop guidelines for community participation in the loan repayment program. The office shall provide consultation to potential community participants and facilitate the matching of communities and health professionals.

**Source:** Laws 1991, LB 400, § 20; Laws 1994, LB 1223, § 65; Laws 1996, LB 1155, § 57.

#### **71-5669.01 Medical resident incentive recipient; agreement; contents.**

Each medical resident incentive recipient shall execute an agreement with the department. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and shall include, at a minimum, the following terms:

(1) The medical resident incentive recipient agrees to practice an approved medical specialty the equivalent of one year of full-time practice in a designated health profession shortage area and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the medical resident incentive recipient, the State of Nebraska will provide funding for the repayment of the recipient's qualified educational debts, in amounts up to forty thousand dollars per year for up to three years while in an approved medical specialty residency program in Nebraska. The department shall make payments directly to the medical resident incentive recipient;

(3) If the medical resident incentive recipient extends his or her residency training but not in an approved specialty, practices an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than an approved specialty in Nebraska, does not practice the profession for which the loan was given, discontinues practice of the profession for which the loan was given, or practices outside Nebraska, the medical resident incentive recipient shall repay to the state one hundred fifty percent of the outstanding loan principal with interest at a rate of eight percent simple interest per year from the date of default. Such repayment shall commence within six months of the completion or discontinuation of an approved specialty residency training in Nebraska and shall be completed within a period not to exceed twice the number of years for which the medical resident incentive recipient received awards; and

(4) Any practice or payment obligation incurred by the medical resident incentive recipient under the medical resident incentive program is canceled in

the event of the medical resident incentive recipient's total and permanent disability or death.

**Source:** Laws 2015, LB196, § 10.

**71-5670 Department; rules and regulations.**

The department shall adopt and promulgate rules and regulations necessary to the administration of the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1991, LB 400, § 21.

**71-5670.01 Rural Health Opportunities Loan Pool Fund; transfers.**

On and after August 28, 1999, any money remaining in the Rural Health Opportunities Loan Pool Fund and any money remitted to the State Treasurer for credit to such fund shall be credited by the State Treasurer to the Rural Health Professional Incentive Fund created under section 71-5661 and used to carry out the purposes of the Rural Health Systems and Professional Incentive Act.

**Source:** Laws 1999, LB 242, § 2.

**Cross References**

Rural Health Systems and Professional Incentive Act, see section 71-5650.

(e) RURAL HEALTH OPPORTUNITIES LOAN ACT

**71-5671 Repealed. Laws 1999, LB 242, § 4.**

**71-5672 Repealed. Laws 1999, LB 242, § 4.**

**71-5673 Repealed. Laws 1999, LB 242, § 4.**

**71-5674 Repealed. Laws 1999, LB 242, § 4.**

**71-5675 Repealed. Laws 1999, LB 242, § 4.**

**71-5676 Repealed. Laws 1999, LB 242, § 4.**

**71-5677 Repealed. Laws 1999, LB 242, § 4.**

**71-5678 Repealed. Laws 1999, LB 242, § 4.**

**71-5679 Repealed. Laws 1999, LB 242, § 4.**

(f) RURAL BEHAVIORAL HEALTH TRAINING  
AND PLACEMENT PROGRAM ACT

**71-5680 Rural Behavioral Health Training and Placement Program Act; act, how cited.**

Sections 71-5680 to 71-5683 shall be known and may be cited as the Rural Behavioral Health Training and Placement Program Act.

**Source:** Laws 2006, LB 994, § 38.

**71-5681 Legislative findings and declarations.**

The Legislature hereby finds and declares that:

(1) Eighty-eight of Nebraska's ninety-three counties are classified as mental and behavioral health profession shortage areas by the federal Health Resources and Services Administration and the Nebraska Department of Health and Human Services;

(2) The Department of Health and Human Services reports that seventy-four percent of the state's psychiatrists, psychologists, and licensed mental health practitioners live and practice in the urban areas of Omaha and Lincoln, which leaves the remaining seventy-two thousand square miles of Nebraska to be covered by approximately one-fourth of the professionals licensed to practice behavioral health in Nebraska;

(3) Thirty-eight Nebraska counties have one or no licensed behavioral health professional; and

(4) Reductions in federal funding will result in the elimination of over five thousand five hundred behavioral health patient visits in rural Nebraska.

**Source:** Laws 2006, LB 994, § 39; Laws 2007, LB296, § 628.

**71-5682 Rural Behavioral Health Training and Placement Program; created.**

The Rural Behavioral Health Training and Placement Program is created and shall be administered by the Munroe-Meyer Institute at the University of Nebraska Medical Center. The program shall address behavioral health professional shortages in rural areas by:

(1) Offering service learning opportunities for behavioral health professionals to provide integrated mental health services in rural areas;

(2) Educating physicians to integrate behavioral health into primary care practice;

(3) Providing outreach clinical training opportunities in rural areas for interns, fellows, and graduate students from public and private universities and colleges in Nebraska that offer behavioral health graduate education; and

(4) Placing program graduates in primary care practices for the purpose of providing behavioral health patient visits.

**Source:** Laws 2006, LB 994, § 40.

**71-5683 Funding under act; use.**

Funding under the Rural Behavioral Health Training and Placement Program Act shall support:

(1) Faculty clinical training activities;

(2) Internship stipends for behavioral health interns and postdoctoral fellows; and

(3) Training and service provision expenses, including, but not limited to, travel to rural clinic sites, equipment, clinic space, patient-record management, scheduling, and telehealth supervision.

**Source:** Laws 2006, LB 994, § 41.

**PUBLIC HEALTH AND WELFARE**

**ARTICLE 57**

**SMOKING AND TOBACCO**

**Cross References**

**Cigarette tax**, disposition of proceeds, see section 77-2602.  
**Game and Parks Commission**, regulation, see section 37-306.  
**License required**, see section 28-1420 et seq.  
**Minors**, use prohibited, see sections 28-1418 et seq. and 28-1427.  
**Natural resources districts**, regulation, see section 2-3293.  
**Smokeless tobacco**, see section 69-1901 et seq.  
**Tobacco product manufacturer**, settlement, see section 69-2701 et seq.  
**Tobacco Products Tax Act**, see section 77-4001 et seq.  
**Unfair Cigarette Sales Act**, see section 59-1501.  
**Vending machines**, restrictions, see section 28-1429.01 et seq.

**(a) CLEAN INDOOR AIR**

**Section**

71-5701. Repealed. Laws 2008, LB 395, § 22.  
71-5702. Repealed. Laws 2008, LB 395, § 22.  
71-5703. Repealed. Laws 2008, LB 395, § 22.  
71-5704. Repealed. Laws 2008, LB 395, § 22.  
71-5705. Repealed. Laws 2008, LB 395, § 22.  
71-5706. Repealed. Laws 2008, LB 395, § 22.  
71-5707. Repealed. Laws 2008, LB 395, § 22.  
71-5708. Repealed. Laws 2008, LB 395, § 22.  
71-5709. Repealed. Laws 2008, LB 395, § 22.  
71-5710. Repealed. Laws 2008, LB 395, § 22.  
71-5711. Repealed. Laws 2008, LB 395, § 22.  
71-5712. Repealed. Laws 2008, LB 395, § 22.  
71-5713. Repealed. Laws 2008, LB 395, § 22.

**(b) TOBACCO PREVENTION AND CONTROL CASH FUND**

71-5714. Tobacco Prevention and Control Program; created.

**(c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT**

71-5715. Repealed. Laws 2009, LB 154, § 27.

**(d) NEBRASKA CLEAN INDOOR AIR ACT**

71-5716. Act, how cited.  
71-5717. Purpose of act.  
71-5718. Definitions, where found.  
71-5719. Employed, defined.  
71-5720. Employee, defined.  
71-5721. Employer, defined.  
71-5722. Guestroom or suite, defined.  
71-5723. Indoor area, defined.  
71-5724. Place of employment, defined.  
71-5725. Proprietor, defined.  
71-5726. Public place, defined.  
71-5727. Smoke or smoking, defined.  
71-5728. Tobacco retail outlet, defined.  
71-5729. Smoking in place of employment or public place prohibited.  
71-5730. Exemptions; legislative findings; legislative intent.  
71-5731. Proprietor; duties.  
71-5732. Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.  
71-5733. Prohibited acts; penalties; act of employee or agent; how construed.  
71-5734. Rules and regulations.  
71-5735. Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.

## (a) CLEAN INDOOR AIR

**71-5701 Repealed. Laws 2008, LB 395, § 22.**

**71-5702 Repealed. Laws 2008, LB 395, § 22.**

**71-5703 Repealed. Laws 2008, LB 395, § 22.**

**71-5704 Repealed. Laws 2008, LB 395, § 22.**

**71-5705 Repealed. Laws 2008, LB 395, § 22.**

**71-5706 Repealed. Laws 2008, LB 395, § 22.**

**71-5707 Repealed. Laws 2008, LB 395, § 22.**

**71-5708 Repealed. Laws 2008, LB 395, § 22.**

**71-5709 Repealed. Laws 2008, LB 395, § 22.**

**71-5710 Repealed. Laws 2008, LB 395, § 22.**

**71-5711 Repealed. Laws 2008, LB 395, § 22.**

**71-5712 Repealed. Laws 2008, LB 395, § 22.**

**71-5713 Repealed. Laws 2008, LB 395, § 22.**

## (b) TOBACCO PREVENTION AND CONTROL CASH FUND

**71-5714 Tobacco Prevention and Control Program; created.**

The Tobacco Prevention and Control Program is created as a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services. The program includes, but is not limited to (1) community programs to reduce tobacco use, (2) chronic disease programs, (3) school programs, (4) statewide programs, (5) enforcement, (6) counter marketing, (7) cessation programs, (8) surveillance and evaluation, and (9) administration.

The State Treasurer shall transfer, on July 1, 2016, the unobligated balance in the Tobacco Prevention and Control Cash Fund to the Nebraska Health Care Cash Fund.

**Source:** Laws 2000, LB 1436, § 3; Laws 2002, LB 1310, § 8; Laws 2003, LB 412, § 3; Laws 2005, LB 301, § 56; Laws 2007, LB296, § 633; Laws 2009, First Spec. Sess., LB2, § 2; Laws 2009, First Spec. Sess., LB3, § 47; Laws 2016, LB957, § 5.

## (c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT

**71-5715 Repealed. Laws 2009, LB 154, § 27.**

## (d) NEBRASKA CLEAN INDOOR AIR ACT

**71-5716 Act, how cited.**

Sections 71-5716 to 71-5735 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

**Source:** Laws 2008, LB395, § 1; Laws 2015, LB118, § 8.

**71-5717 Purpose of act.**

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment with limited exceptions for guestrooms and suites, research, tobacco retail outlets, and cigar shops. The limited exceptions permit smoking in public places where the public would reasonably expect to find persons smoking, including guestrooms and suites which are subject to expectations of privacy like private residences, institutions engaged in research related to smoking, and tobacco retail outlets and cigar shops which provide the public legal retail outlets to sample, use, and purchase tobacco products and products related to smoking. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The act shall be liberally construed to further its purpose.

**Source:** Laws 2008, LB395, § 2; Laws 2015, LB118, § 9.

**71-5718 Definitions, where found.**

For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5719 to 71-5728 apply.

**Source:** Laws 2008, LB395, § 3.

**71-5719 Employed, defined.**

Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

**Source:** Laws 2008, LB395, § 4.

**71-5720 Employee, defined.**

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages, profit, or other remuneration.

**Source:** Laws 2008, LB395, § 5.

**71-5721 Employer, defined.**

Employer means a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, cooperative, firm, trust, association, organization, or other business entity, including retail establishments where goods or services are sold, who or which employs one or more employees.

**Source:** Laws 2008, LB395, § 6.

**71-5722 Guestroom or suite, defined.**

Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment.

**Source:** Laws 2008, LB395, § 7.

**71-5723 Indoor area, defined.**



Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

**Source:** Laws 2008, LB395, § 8.

**71-5724 Place of employment, defined.**

Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

**Source:** Laws 2008, LB395, § 9.

**71-5725 Proprietor, defined.**

Proprietor means any employer, owner, operator, supervisor, manager, or other person who controls, governs, or directs the activities in a place of employment or public place.

**Source:** Laws 2008, LB395, § 10.

**71-5726 Public place, defined.**

Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place.

**Source:** Laws 2008, LB395, § 11.

**71-5727 Smoke or smoking, defined.**

Smoke or smoking means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition.

**Source:** Laws 2008, LB395, § 12.

**71-5728 Tobacco retail outlet, defined.**

Tobacco retail outlet means a store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline.

**Source:** Laws 2008, LB395, § 13.

**71-5729 Smoking in place of employment or public place prohibited.**

Except as otherwise provided in section 71-5730, it is unlawful for any person to smoke in a place of employment or a public place.

**Source:** Laws 2008, LB395, § 14.

**71-5730 Exemptions; legislative findings; legislative intent.**

(1) The following indoor areas are exempt from section 71-5729:

(a) Guestrooms and suites that are rented to guests and that are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(b) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(c) Tobacco retail outlets; and

(d) Cigar shops as defined in section 53-103.08.

(2)(a) The Legislature finds that allowing smoking in tobacco retail outlets as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke since the general public does not frequent tobacco retail outlets and should reasonably expect that there would be second-hand smoke in tobacco retail outlets and could choose to avoid such exposure. The products that tobacco retail outlets sell are legal for customers who meet the age requirement. Customers should be able to try them within the tobacco retail outlet, especially given the way that tobacco customization may occur in how tobacco is blended and cigars are produced. The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

(3)(a) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the

smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(c) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(d) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

**Source:** Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82; Laws 2015, LB118, § 10.

The statutory exemptions for tobacco retail outlets and cigar bars are unconstitutional special legislation. *Big John's Billiards v. State*, 288 Neb. 938, 852 N.W.2d 727 (2014).

**71-5731 Proprietor; duties.**

A proprietor of a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Air Act shall take necessary and appropriate steps to ensure compliance with the act at such place.

**Source:** Laws 2008, LB395, § 16.

**71-5732 Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.**

(1) The Department of Health and Human Services or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

(2) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to report a violation of the act.

(3) The Department of Health and Human Services may waive provisions of the Nebraska Clean Indoor Air Act upon good cause shown and shall provide for appropriate protection of the public health and safety in the granting of such waivers.

**Source:** Laws 2008, LB395, § 17.

**71-5733 Prohibited acts; penalties; act of employee or agent; how construed.**

(1) A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his or her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

(2) A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

(3) Each day that a violation continues to exist shall constitute a separate and distinct violation.

(4) Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor.

**Source:** Laws 2008, LB395, § 18.

#### **71-5734 Rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Nebraska Clean Indoor Air Act. The department shall consult with interested persons and professional organizations before adopting such rules and regulations.

**Source:** Laws 2008, LB395, § 19.

#### **71-5735 Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.**

(1) The owner of a tobacco retail outlet shall post a sign on all entrances to the tobacco retail outlet, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: **SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.**

(2) Beginning November 1, 2015, the owner shall provide to the Division of Public Health a copy of a waiver signed prior to employment by each employee on a form prescribed by the division. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

(3) The owner shall not allow cigarette smoking in the tobacco retail outlet.

**Source:** Laws 2015, LB118, § 11.

## **ARTICLE 58**

### **HEALTH CARE; CERTIFICATE OF NEED**

#### **Cross References**

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

**Health Care Facility-Provider Cooperation Act**, see section 71-7701.

**Nonprofit Hospital Sale Act**, see section 71-20,102.

## HEALTH CARE; CERTIFICATE OF NEED

Section	
71-5801.	Act, how cited.
71-5802.	Repealed. Laws 1997, LB 798, § 39.
71-5803.	Definitions, where found.
71-5803.01.	Acute care bed, defined.
71-5803.02.	Ambulatory surgical center, defined.
71-5803.03.	Certificate of need, defined.
71-5803.04.	Department, defined.
71-5803.05.	Assisted-living facility, defined.
71-5803.06.	Health care facility, defined.
71-5803.07.	Health planning region, defined.
71-5803.08.	Hospital, defined.
71-5803.09.	Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.
71-5803.10.	Long-term care bed, defined.
71-5803.11.	Nursing facility, defined.
71-5803.12.	Person, defined.
71-5803.13.	Rehabilitation bed, defined.
71-5803.14.	Repealed. Laws 1997, LB 608, § 30.
71-5803.15.	Skilled nursing facility, defined.
71-5804.	Transferred to section 71-5803.02.
71-5805.	Repealed. Laws 1997, LB 798, § 39.
71-5805.01.	Repealed. Laws 1997, LB 798, § 39.
71-5806.	Transferred to section 71-5803.03.
71-5807.	Repealed. Laws 1997, LB 798, § 39.
71-5808.	Transferred to section 71-5803.04.
71-5809.	Repealed. Laws 1997, LB 798, § 39.
71-5809.01.	Transferred to section 71-5803.05.
71-5809.02.	Transferred to section 71-5803.11.
71-5810.	Transferred to section 71-5803.06.
71-5811.	Repealed. Laws 1997, LB 798, § 39.
71-5812.	Repealed. Laws 1997, LB 798, § 39.
71-5813.	Repealed. Laws 1997, LB 798, § 39.
71-5814.	Repealed. Laws 1997, LB 798, § 39.
71-5815.	Repealed. Laws 1997, LB 798, § 39.
71-5816.	Transferred to section 71-5803.08.
71-5817.	Repealed. Laws 1997, LB 798, § 39.
71-5818.	Repealed. Laws 1997, LB 798, § 39.
71-5818.01.	Transferred to section 71-5803.13.
71-5818.02.	Transferred to section 71-5803.14.
71-5818.03.	Repealed. Laws 1997, LB 798, § 39.
71-5819.	Transferred to section 71-5803.09.
71-5820.	Repealed. Laws 1997, LB 798, § 39.
71-5821.	Repealed. Laws 1997, LB 798, § 39.
71-5821.01.	Repealed. Laws 1997, LB 798, § 39.
71-5822.	Transferred to section 71-5803.12.
71-5823.	Repealed. Laws 1997, LB 798, § 39.
71-5824.	Transferred to section 71-5803.15.
71-5825.	Repealed. Laws 1997, LB 798, § 39.
71-5826.	Repealed. Laws 1997, LB 798, § 39.
71-5827.	Repealed. Laws 1982, LB 378, § 57.
71-5828.	Repealed. Laws 1997, LB 798, § 39.
71-5829.	Repealed. Laws 1997, LB 798, § 39.
71-5829.01.	Repealed. Laws 2009, LB 195, § 111.
71-5829.02.	Repealed. Laws 2009, LB 195, § 111.
71-5829.03.	Certificate of need; activities requiring.
71-5829.04.	Long-term care beds; moratorium; exceptions; department; duties.
71-5829.05.	Long-term care beds; certificate of need; issuance; conditions.
71-5829.06.	Rehabilitation beds; moratorium; exceptions.
71-5830.	Repealed. Laws 1997, LB 798, § 39.
71-5830.01.	Certificate of need; exempt activities.

## Section

- 71-5831. Repealed. Laws 1997, LB 798, § 39.  
 71-5832. Repealed. Laws 1997, LB 798, § 39.  
 71-5832.01. Repealed. Laws 1997, LB 798, § 39.  
 71-5832.02. Repealed. Laws 1989, LB 429, § 43.  
 71-5833. Repealed. Laws 1997, LB 798, § 39.  
 71-5834. Repealed. Laws 1997, LB 798, § 39.  
 71-5835. Repealed. Laws 1997, LB 798, § 39.  
 71-5836. Department; duties.  
 71-5836.01. Repealed. Laws 1997, LB 798, § 39.  
 71-5836.02. Repealed. Laws 1997, LB 798, § 39.  
 71-5837. Certificate of need application; filing; fee.  
 71-5838. Repealed. Laws 1997, LB 798, § 39.  
 71-5839. Repealed. Laws 1982, LB 378, § 57.  
 71-5840. Repealed. Laws 1997, LB 798, § 39.  
 71-5841. Repealed. Laws 1997, LB 798, § 39.  
 71-5842. Transferred to section 71-5859.01.  
 71-5843. Transferred to section 71-5859.02.  
 71-5844. Transferred to section 71-5859.04.  
 71-5844.01. Repealed. Laws 1989, LB 429, § 43.  
 71-5845. Transferred to section 71-5859.03.  
 71-5846. Certificate of need; decision; department; duties.  
 71-5847. Repealed. Laws 1989, LB 429, § 43.  
 71-5848. Application; decision; findings and conclusions.  
 71-5848.01. Certificate of need; period valid; renewal.  
 71-5849. Repealed. Laws 1997, LB 798, § 39.  
 71-5850. Repealed. Laws 1989, LB 429, § 43.  
 71-5851. Repealed. Laws 1997, LB 798, § 39.  
 71-5852. Repealed. Laws 1997, LB 798, § 39.  
 71-5853. Repealed. Laws 1997, LB 798, § 39.  
 71-5854. Repealed. Laws 1997, LB 798, § 39.  
 71-5855. Repealed. Laws 1997, LB 798, § 39.  
 71-5856. Repealed. Laws 1982, LB 378, § 57.  
 71-5857. Repealed. Laws 1997, LB 798, § 39.  
 71-5858. Repealed. Laws 1989, LB 429, § 43.  
 71-5859. Department; decision; appeal procedures.  
 71-5859.01. Repealed. Laws 1997, LB 798, § 39.  
 71-5859.02. Repealed. Laws 1997, LB 798, § 39.  
 71-5859.03. Repealed. Laws 1997, LB 798, § 39.  
 71-5859.04. Repealed. Laws 1997, LB 798, § 39.  
 71-5860. Repealed. Laws 1989, LB 429, § 43.  
 71-5861. Repealed. Laws 1989, LB 429, § 43.  
 71-5862. Repealed. Laws 1989, LB 429, § 43.  
 71-5863. Repealed. Laws 1989, LB 429, § 43.  
 71-5864. Repealed. Laws 1989, LB 429, § 43.  
 71-5865. Certificate of need; appeal; burden of proof.  
 71-5866. Repealed. Laws 1997, LB 798, § 39.  
 71-5867. Transferred to section 71-5848.01.  
 71-5868. Violation; department; maintain action.  
 71-5869. Health care facility; license or permit; denial, revocation, or suspension; grounds.  
 71-5870. Violation; penalty.  
 71-5871. Repealed. Laws 1980, LB 725, § 1.  
 71-5872. Repealed. Laws 1993, LB 9, § 3.

**71-5801 Act, how cited.**

Sections 71-5801 to 71-5870 shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

**Source:** Laws 1979, LB 172, § 1; Laws 1982, LB 378, § 1; Laws 1989, LB 429, § 2; Laws 1991, LB 244, § 9; Laws 1993, LB 9, § 1; Laws 1996, LB 1155, § 58; Laws 1997, LB 798, § 3.

Consideration of a certificate of need application under the Nebraska Health Care Certificate of Need Act is governed by three authorities: (1) The act, (2) department regulations promulgated under the act, and (3) the state health plan. *Gramercy Hill Enters. v. State of Nebraska*, Department of Health, 255 Neb. 717, 587 N.W.2d 378 (1998).

Under the Nebraska Health Care Certificate of Need Act, need for nursing beds is not synonymous with demand. Need focuses on long-range plans for services to an entire population, while demand connotes an immediate preference on the part of an individual to live in a particular nursing facility. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).

**71-5802 Repealed. Laws 1997, LB 798, § 39.**

**71-5803 Definitions, where found.**

For purposes of the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5803.01 to 71-5803.15 shall be used.

**Source:** Laws 1979, LB 172, § 3; Laws 1982, LB 378, § 3; Laws 1989, LB 429, § 4; Laws 1991, LB 244, § 10; Laws 1996, LB 1155, § 59; Laws 1997, LB 798, § 4.

**71-5803.01 Acute care bed, defined.**

Acute care bed means a bed in a hospital that is or will be licensed under the Health Care Facility Licensure Act for acute care services or a bed that is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act, as amended, as a rehabilitation hospital or rehabilitation unit.

**Source:** Laws 1997, LB 798, § 5; Laws 2000, LB 819, § 112.

**Cross References**

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

**71-5803.02 Ambulatory surgical center, defined.**

Ambulatory surgical center has the same meaning as in section 71-405.

**Source:** Laws 1979, LB 172, § 4; Laws 1989, LB 429, § 5; Laws 1994, LB 1210, § 145; R.S.1943, (1996), § 71-5804; Laws 1997, LB 798, § 6; Laws 2000, LB 819, § 113.

**71-5803.03 Certificate of need, defined.**

Certificate of need means a written authorization by the department for a person to implement the project under review.

**Source:** Laws 1979, LB 172, § 6; R.S.1943, (1996), § 71-5806; Laws 1997, LB 798, § 7.

**71-5803.04 Department, defined.**

Department means the Department of Health and Human Services.

**Source:** Laws 1979, LB 172, § 8; Laws 1996, LB 1044, § 736; R.S.1943, (1996), § 71-5808; Laws 1997, LB 798, § 8; Laws 2007, LB296, § 634.

**71-5803.05 Assisted-living facility, defined.**

Assisted-living facility has the same meaning as in section 71-5903.

**Source:** Laws 1989, LB 429, § 7; Laws 1997, LB 608, § 18; R.S.1943, (1996), § 71-5809.01; Laws 1997, LB 798, § 9; Laws 2000, LB 819, § 114; Laws 2018, LB439, § 2.

Effective date July 19, 2018.

**71-5803.06 Health care facility, defined.**

Health care facility means hospitals, skilled nursing facilities, intermediate care facilities, and nursing facilities.

**Source:** Laws 1979, LB 172, § 10; Laws 1982, LB 378, § 6; Laws 1989, LB 429, § 8; Laws 1991, LB 244, § 12; Laws 1993, LB 121, § 443; Laws 1994, LB 1210, § 146; Laws 1996, LB 1155, § 62; Laws 1997, LB 608, § 19; R.S.1943, (1996), § 71-5810; Laws 1997, LB 798, § 10.

**71-5803.07 Health planning region, defined.**

Health planning region means one of the twenty-six health planning regions established in the Nebraska State Health Plan, 1986-1991.

**Source:** Laws 1997, LB 798, § 11.

**71-5803.08 Hospital, defined.**

Hospital has the same meaning as in section 71-419.

**Source:** Laws 1979, LB 172, § 16; R.S.1943, (1996), § 71-5816; Laws 1997, LB 798, § 12; Laws 2000, LB 819, § 115.

**71-5803.09 Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.**

Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for persons with developmental disabilities that has sixteen or more beds. Intermediate care facility for persons with developmental disabilities has the same meaning as in section 71-421.

**Source:** Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1; Laws 2013, LB23, § 36.

**71-5803.10 Long-term care bed, defined.**

Long-term care bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act as a skilled nursing facility, intermediate care facility, nursing facility, or long-term care hospital. Long-term care beds do not include residential care beds, domiciliary beds, or swing beds. For purposes of this section, swing beds means beds which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as urban by the United States Bureau of the Census and which has up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

**Source:** Laws 1997, LB 798, § 14; Laws 2000, LB 819, § 117.

**Cross References**

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



**71-5803.11 Nursing facility, defined.**

Nursing facility has the same meaning as in section 71-424.

**Source:** Laws 1991, LB 244, § 11; R.S.1943, (1996), § 71-5809.02; Laws 1997, LB 798, § 15; Laws 2000, LB 819, § 118.

**71-5803.12 Person, defined.**

Person means an individual, a trust or estate, a partnership, a limited liability company, a corporation, including associations, joint-stock companies, and insurance companies, a state, a political subdivision or instrumentality, including a municipal corporation, of a state, or any legal entity recognized by the state.

**Source:** Laws 1979, LB 172, § 22; Laws 1982, LB 378, § 13; Laws 1993, LB 121, § 445; R.S.1943, (1996), § 71-5822; Laws 1997, LB 798, § 16.

**71-5803.13 Rehabilitation bed, defined.**

Rehabilitation bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act if the bed is in an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision and if the bed is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act as a rehabilitation hospital or rehabilitation unit.

**Source:** Laws 1982, LB 378, § 9; R.S.1943, (1996), § 71-5818.01; Laws 1997, LB 798, § 17; Laws 2000, LB 819, § 119.

**Cross References**

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

**71-5803.14 Repealed. Laws 1997, LB 608, § 30.****71-5803.15 Skilled nursing facility, defined.**

Skilled nursing facility has the same meaning as in section 71-429.

**Source:** Laws 1979, LB 172, § 24; R.S.1943, (1996), § 71-5824; Laws 1997, LB 798, § 19; Laws 2000, LB 819, § 120.

**71-5804 Transferred to section 71-5803.02.****71-5805 Repealed. Laws 1997, LB 798, § 39.****71-5805.01 Repealed. Laws 1997, LB 798, § 39.****71-5806 Transferred to section 71-5803.03.****71-5807 Repealed. Laws 1997, LB 798, § 39.****71-5808 Transferred to section 71-5803.04.****71-5809 Repealed. Laws 1997, LB 798, § 39.****71-5809.01 Transferred to section 71-5803.05.**

**71-5809.02** Transferred to section 71-5803.11.

**71-5810** Transferred to section 71-5803.06.

**71-5811** Repealed. Laws 1997, LB 798, § 39.

**71-5812** Repealed. Laws 1997, LB 798, § 39.

**71-5813** Repealed. Laws 1997, LB 798, § 39.

**71-5814** Repealed. Laws 1997, LB 798, § 39.

**71-5815** Repealed. Laws 1997, LB 798, § 39.

**71-5816** Transferred to section 71-5803.08.

**71-5817** Repealed. Laws 1997, LB 798, § 39.

**71-5818** Repealed. Laws 1997, LB 798, § 39.

**71-5818.01** Transferred to section 71-5803.13.

**71-5818.02** Transferred to section 71-5803.14.

**71-5818.03** Repealed. Laws 1997, LB 798, § 39.

**71-5819** Transferred to section 71-5803.09.

**71-5820** Repealed. Laws 1997, LB 798, § 39.

**71-5821** Repealed. Laws 1997, LB 798, § 39.

**71-5821.01** Repealed. Laws 1997, LB 798, § 39.

**71-5822** Transferred to section 71-5803.12.

**71-5823** Repealed. Laws 1997, LB 798, § 39.

**71-5824** Transferred to section 71-5803.15.

**71-5825** Repealed. Laws 1997, LB 798, § 39.

**71-5826** Repealed. Laws 1997, LB 798, § 39.

**71-5827** Repealed. Laws 1982, LB 378, § 57.

**71-5828** Repealed. Laws 1997, LB 798, § 39.

**71-5829** Repealed. Laws 1997, LB 798, § 39.

**71-5829.01** Repealed. Laws 2009, LB 195, § 111.

**71-5829.02** Repealed. Laws 2009, LB 195, § 111.

**71-5829.03** Certificate of need; activities requiring.

Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

(2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;

(3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;

(4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;

(5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or

(6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility, except that no certificate of need is required for relocation or transfer of rehabilitation beds from a health care facility to another health care facility owned and operated by the same entity.

**Source:** Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84; Laws 2013, LB487, § 1.

**71-5829.04 Long-term care beds; moratorium; exceptions; department; duties.**

(1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application unless the department determines that all long-term care beds in a licensed facility located in a city of the second class or village have been sold or transferred to another facility or facilities located outside of the twenty-five-mile radius of the city or village resulting in no licensed long-term care beds within the corporate

limits of the city of the second class or village. In such case, the department shall waive the certificate of need limitations of this subdivision for development and licensure of a long-term care facility by a political subdivision or a nonprofit organization in such a city of the second class or village if the political subdivision or nonprofit organization agrees not to sell long-term care beds licensed under such waiver or increase the number of long-term care beds as allowed under subdivision (2) of section 71-5829.03 until five years have passed after such beds are first occupied. The number of licensed long-term care beds in the facility shall be limited to the number of long-term care beds sold or transferred as described in this subdivision.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;

(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

(d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

**Source:** Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85; Laws 2013, LB344, § 1.

**71-5829.05 Long-term care beds; certificate of need; issuance; conditions.**

If two or more applications are submitted within thirty days after the receipt of the first application for the same health planning region and the approval of all the applications would result in long-term care beds in the health planning region in excess of the long-term care bed need established in section 71-5829.04, the department shall grant the application and issue a certificate of need, subject to any reduction in beds required by section 71-5846 to the applicant which is better able to: (1) Provide quality care; (2) operate a long-term care facility in a cost-effective manner based on annual cost reports submitted to the department; (3) accumulate financial resources to complete the project; and (4) serve medicare, medicaid, and medically indigent long-term care patients in the area. The department shall show a preference to an application filed by an applicant with facilities in Nebraska. Information to make these determinations shall be limited to the application and data currently collected by the state. If the applicant does not have a facility in Nebraska, the department may request information from other states in which the applicant is offering services to make its determination.

**Source:** Laws 1997, LB 798, § 24; Laws 2007, LB296, § 635.

**71-5829.06 Rehabilitation beds; moratorium; exceptions.**

All rehabilitation beds which require a certificate of need are subject to a moratorium, unless one of the following exceptions applies:

(1) If the average occupancy for all rehabilitation beds located in Nebraska has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines the average occupancy for all rehabilitation beds located in Nebraska does not exceed ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department shall deny the application; or

(2) If the average occupancy for all rehabilitation beds within a health planning region exceeds eighty percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application and no other comparable services are otherwise available in the health planning region, the department shall grant an exception to the moratorium and issue a certificate of need for up to three rehabilitation beds.

**Source:** Laws 1997, LB 798, § 25; Laws 2008, LB765, § 2.

**71-5830 Repealed. Laws 1997, LB 798, § 39.**

**71-5830.01 Certificate of need; exempt activities.**

Notwithstanding any other provisions of the Nebraska Health Care Certificate of Need Act, a certificate of need is not required for:

(1) A change in classification between an intermediate care facility, a nursing facility, or a skilled nursing facility;

(2) A project of a county in which is located a city of the metropolitan class for which a bond issue has been approved by the electorate of such county on or after January 1, 1994;

(3) A project of a federally recognized Indian tribe to be located on tribal lands within the exterior boundaries of the State of Nebraska where (a) a

determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by existing facilities if such project has been approved by the tribe's governing body and (b) the tribe has a self-determination agreement in place with the Indian Health Service of the United States Department of Health and Human Services so that payment for enrolled members of a federally recognized Indian tribe who are served at such facility will be made with one hundred percent federal reimbursement; and

(4) A transfer or relocation of long-term care beds from one facility to another entity in the same health planning region or any other health planning region. The receiving entity shall obtain a license for the transferred or relocated beds within two years after the transfer or relocation. The department shall grant an extension of such time if the receiving entity is making progress toward the licensure of such beds.

**Source:** Laws 1982, LB 378, § 56; Laws 1989, LB 429, § 16; Laws 1997, LB 798, § 26; Laws 1999, LB 594, § 60; Laws 2008, LB928, § 31; Laws 2009, LB195, § 86.

**71-5831 Repealed. Laws 1997, LB 798, § 39.**

**71-5832 Repealed. Laws 1997, LB 798, § 39.**

**71-5832.01 Repealed. Laws 1997, LB 798, § 39.**

**71-5832.02 Repealed. Laws 1989, LB 429, § 43.**

**71-5833 Repealed. Laws 1997, LB 798, § 39.**

**71-5834 Repealed. Laws 1997, LB 798, § 39.**

**71-5835 Repealed. Laws 1997, LB 798, § 39.**

**71-5836 Department; duties.**

The department, after consulting with appropriate governmental agencies and affected persons, shall:

(1) Prescribe the form to be used in applying for certificates of need and for applying for renewal of such certificates. The application shall contain (a) the name and address of the sponsor, (b) the anticipated date for placing the beds in service, (c) the location, (d) the number of new beds, (e) a concise, narrative description of the project showing the type and description of proposed acute care beds, rehabilitation beds, or long-term care beds, and (f) the certification and telephone number of a responsible officer; and

(2) By rule and regulation describe and clarify the procedures to be followed in the review of an application. Such procedures shall be issued with each application form.

**Source:** Laws 1979, LB 172, § 36; Laws 1982, LB 378, § 25; Laws 1989, LB 429, § 22; Laws 1997, LB 798, § 27.

**71-5836.01 Repealed. Laws 1997, LB 798, § 39.**

**71-5836.02 Repealed. Laws 1997, LB 798, § 39.**

**71-5837 Certificate of need application; filing; fee.**

An application for a certificate of need shall be filed with the department. All applications for a certificate of need shall be accompanied by a one-thousand-dollar nonrefundable fee. Such fee shall be remitted to the State Treasurer for credit to the General Fund.

**Source:** Laws 1979, LB 172, § 37; Laws 1982, LB 378, § 28; Laws 1989, LB 429, § 24; Laws 1993, LB 840, § 1; Laws 1997, LB 798, § 28.

**71-5838 Repealed. Laws 1997, LB 798, § 39.**

**71-5839 Repealed. Laws 1982, LB 378, § 57.**

**71-5840 Repealed. Laws 1997, LB 798, § 39.**

**71-5841 Repealed. Laws 1997, LB 798, § 39.**

**71-5842 Transferred to section 71-5859.01.**

**71-5843 Transferred to section 71-5859.02.**

**71-5844 Transferred to section 71-5859.04.**

**71-5844.01 Repealed. Laws 1989, LB 429, § 43.**

**71-5845 Transferred to section 71-5859.03.**

**71-5846 Certificate of need; decision; department; duties.**

The department shall make a decision in writing to (1) approve the application and issue a certificate of need, (2) disapprove the application and deny a certificate of need, or (3) if the application is for more long-term care beds than allowed under section 71-5829.04, approve the application but issue a certificate of need only for the reduced number of beds that section 71-5829.04 allows. The department shall make its decision within sixty days after the date the application was received.

**Source:** Laws 1979, LB 172, § 46; Laws 1982, LB 378, § 37; Laws 1989, LB 429, § 27; Laws 1996, LB 1155, § 65; Laws 1997, LB 798, § 29.

**71-5847 Repealed. Laws 1989, LB 429, § 43.**

**71-5848 Application; decision; findings and conclusions.**

The department shall, when it approves or rejects an application, provide in writing to the applicant the decision and the findings and conclusions on which it based the decision.

**Source:** Laws 1979, LB 172, § 48; Laws 1982, LB 378, § 39; Laws 1989, LB 429, § 28; Laws 1997, LB 798, § 30.

**71-5848.01 Certificate of need; period valid; renewal.**

A new or modified certificate of need shall be valid for a period of one year from the date of issuance and may be renewed at the expiration of such period for up to one year if the holder of the certificate establishes that the holder is meeting the timetable or making a good faith effort to meet it. The department shall give written notice to an applicant for a renewal certificate of its decision within thirty days after receipt of an application. Such decision shall be

considered a final decision of the department for purposes of appeal. If the decision is not appealed, it shall be final as of the date issued.

**Source:** Laws 1979, LB 172, § 67; Laws 1982, LB 378, § 53; R.S.1943, (1986), § 71-5867; Laws 1989, LB 429, § 29; Laws 1997, LB 798, § 31.

**71-5849 Repealed. Laws 1997, LB 798, § 39.**

**71-5850 Repealed. Laws 1989, LB 429, § 43.**

**71-5851 Repealed. Laws 1997, LB 798, § 39.**

**71-5852 Repealed. Laws 1997, LB 798, § 39.**

**71-5853 Repealed. Laws 1997, LB 798, § 39.**

**71-5854 Repealed. Laws 1997, LB 798, § 39.**

**71-5855 Repealed. Laws 1997, LB 798, § 39.**

**71-5856 Repealed. Laws 1982, LB 378, § 57.**

**71-5857 Repealed. Laws 1997, LB 798, § 39.**

**71-5858 Repealed. Laws 1989, LB 429, § 43.**

**71-5859 Department; decision; appeal procedures.**

The department shall adopt and promulgate rules and regulations establishing procedures in accordance with the Administrative Procedure Act by which the applicant may appeal a decision by the department. The applicant may appeal a final decision of the department to the district court in accordance with the Administrative Procedure Act.

**Source:** Laws 1979, LB 172, § 59; Laws 1982, LB 378, § 49; Laws 1989, LB 429, § 31; Laws 1997, LB 798, § 32; Laws 2007, LB296, § 636.

#### Cross References

Administrative Procedure Act, see section 84-920.

**71-5859.01 Repealed. Laws 1997, LB 798, § 39.**

**71-5859.02 Repealed. Laws 1997, LB 798, § 39.**

**71-5859.03 Repealed. Laws 1997, LB 798, § 39.**

**71-5859.04 Repealed. Laws 1997, LB 798, § 39.**

**71-5860 Repealed. Laws 1989, LB 429, § 43.**

**71-5861 Repealed. Laws 1989, LB 429, § 43.**

**71-5862 Repealed. Laws 1989, LB 429, § 43.**

**71-5863 Repealed. Laws 1989, LB 429, § 43.**

**71-5864 Repealed. Laws 1989, LB 429, § 43.**

**71-5865 Certificate of need; appeal; burden of proof.**



In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria established in sections 71-5829.03 to 71-5829.06.

**Source:** Laws 1979, LB 172, § 65; Laws 1982, LB 378, § 51; Laws 1989, LB 429, § 36; Laws 1997, LB 798, § 33; Laws 2009, LB195, § 87.

In an appeal from a decision granting a certificate of need, the party appealing bears the burden of proof that the application does not meet the applicable criteria. Department of Health v. Lutheran Hosp. & Homes Inc., 227 Neb. 116, 416 N.W.2d 222 (1987).

In an appeal of a decision to grant a certificate of need, the party appealing that decision shall bear the burden of proof that the application does not meet the applicable criteria. Department of Health v. Grand Island Health Care, 223 Neb. 587, 391 N.W.2d 582 (1986).

**71-5866 Repealed. Laws 1997, LB 798, § 39.**

**71-5867 Transferred to section 71-5848.01.**

**71-5868 Violation; department; maintain action.**

The department may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person who is engaging in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without first having a valid certificate of need or who is engaging in an activity prohibited under the act.

**Source:** Laws 1979, LB 172, § 68; Laws 1982, LB 378, § 54; Laws 1989, LB 429, § 38; Laws 1997, LB 798, § 34.

**71-5869 Health care facility; license or permit; denial, revocation, or suspension; grounds.**

(1) A license or permit which has been issued by the department under the Health Care Facility Licensure Act or any other state statute to a health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act is subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in the Health Care Facility Licensure Act.

(2) No license or permit may be issued or renewed by the department under the Health Care Facility Licensure Act or any other state statute, nor may any type of approval be granted to any health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act.

**Source:** Laws 1979, LB 172, § 69; Laws 1997, LB 798, § 35; Laws 2000, LB 819, § 121.

#### Cross References

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

**71-5870 Violation; penalty.**

Any person who violates the Nebraska Health Care Certificate of Need Act by engaging in any activity which requires a certificate of need without first obtaining a certificate of need as required by the act or by engaging in an activity prohibited under the act is guilty of a Class IV misdemeanor. Each day

of violation constitutes a separate offense. The magnitude of the violation is the primary consideration in establishing the amount of the fine.

**Source:** Laws 1979, LB 172, § 70; Laws 1982, LB 378, § 55; Laws 1989, LB 429, § 39; Laws 1997, LB 798, § 36.

**71-5871 Repealed. Laws 1980, LB 725, § 1.**

**71-5872 Repealed. Laws 1993, LB 9, § 3.**

## ARTICLE 59

### ASSISTED-LIVING FACILITY ACT

#### Section

- 71-5901. Act, how cited.
- 71-5902. Purposes of act.
- 71-5903. Terms, defined.
- 71-5904. Administrator; discretion.
- 71-5905. Admission or retention; conditions; services of employees; requirements; written information provided to applicant for admission; resident services agreement.
- 71-5906. Complex nursing interventions; authorized; drugs, devices, biologicals, and supplements; list required; duties.
- 71-5907. Life Safety Code classification.
- 71-5908. Rules and regulations.
- 71-5909. Repealed. Laws 2000, LB 819, § 162.

#### **71-5901 Act, how cited.**

Sections 71-5901 to 71-5908 shall be known and may be cited as the Assisted-Living Facility Act.

**Source:** Laws 2004, LB 1005, § 45.

#### **71-5902 Purposes of act.**

The purposes of the Assisted-Living Facility Act are to supplement provisions of the Health Care Facility Licensure Act relating to the licensure and regulation of assisted-living facilities, to provide for the health and safety of residents of such facilities, and to promote the goals of individualized decisionmaking and personal autonomy.

**Source:** Laws 2004, LB 1005, § 46; Laws 2018, LB439, § 3.  
Effective date July 19, 2018.

#### Cross References

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

#### **71-5903 Terms, defined.**

For purposes of the Assisted-Living Facility Act:

(1) Activities of daily living means activities such as bathing, continence, dressing, grooming, eating, mobility, toileting, transferring, and self-administration of medication and similar activities;

(2) Administrator means the person responsible for day-to-day operations of an assisted-living facility and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation;

(3)(a) Assisted-living facility means a residential setting that provides assisted-living services for remuneration to four or more persons who reside in such residential setting and are not related to the owner of the residential setting and, except as provided in subdivision (b) of this subdivision, includes a home, an apartment, or a facility; and

(b) Assisted-living facility does not include a home, an apartment, or a facility in which (i) casual care is provided at irregular intervals or (ii) a competent person residing in such home, apartment, or facility provides for or contracts for his or her own personal or professional services if no more than fifty percent of the persons residing in such home, apartment, or facility receive such services;

(4) Assisted-living services means services that promote the health and safety of persons in a residential setting, including housing, three meals each day, access to staff for twenty-four hours each day, noncomplex nursing interventions, and support with activities of daily living, and includes resident assessment for admission and continued stay;

(5) Authorized representative means a person authorized by a resident of an assisted-living facility, such as a person holding a power of attorney or a resident designee, or authorized by a court, such as a guardian, to manage the affairs of the resident;

(6) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(7) Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process;

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

(9) Noncomplex interventions means interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable;

(10) Part-time or intermittent basis means not to exceed ten hours each week for each resident for a period of time with a predictable end within twenty-one days;

(11) Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body; and

(12) Resident services agreement means an agreement entered into by the resident or the resident's authorized representative and the assisted-living facility that stipulates the responsibilities of the assisted-living facility and the resident, identifies service needs of the resident, outlines the services that will be provided to the resident by the assisted-living facility and from other sources, and specifies the cost of services provided by the assisted-living facility.

**Source:** Laws 1997, LB 608, § 13; R.S.Supp.,1998, § 71-20,115; Laws 2000, LB 819, § 60; R.S.1943, (2003), § 71-460; Laws 2004, LB 1005, § 47; Laws 2007, LB296, § 637; Laws 2018, LB439, § 4. Effective date July 19, 2018.

**71-5904 Administrator; discretion.**

Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, and dignity.

The administrator shall have the discretion regarding admission or retention of residents of the assisted-living facility subject to the Assisted-Living Facility Act and rules and regulations adopted and promulgated under the act.

**Source:** Laws 1997, LB 608, § 14; R.S.Supp.,1998, § 71-20,116; Laws 2000, LB 819, § 61; R.S.1943, (2003), § 71-461; Laws 2004, LB 1005, § 48; Laws 2018, LB439, § 5.  
Effective date July 19, 2018.

**71-5905 Admission or retention; conditions; services of employees; requirements; written information provided to applicant for admission; resident services agreement.**

(1) An assisted-living facility shall determine if an applicant for admission to the assisted-living facility is admitted or if a resident of the assisted-living facility is retained based on the care needs of the applicant or resident, the ability to meet those care needs within the assisted-living facility, and the degree to which the admission or retention of the applicant or resident poses a danger to the applicant or resident or others.

(2) Any complex nursing intervention or noncomplex intervention provided by an employee of the assisted-living facility shall be performed in accordance with applicable state law.

(3) Each assisted-living facility shall provide written information about the practices of the assisted-living facility to each applicant for admission to the facility or his or her authorized representative. The information shall include:

(a) A description of the services provided by the assisted-living facility and the staff available to provide the services;

(b) The charges for services provided by the assisted-living facility;

(c) Whether or not the assisted-living facility accepts residents who are eligible for the medical assistance program under the Medical Assistance Act and, if applicable, the policies or limitations on access to services provided by the assisted-living facility for residents who seek care paid by the medical assistance program;

(d) The criteria for admission to and continued residence in the assisted-living facility and the process for addressing issues that may prevent admission to or continued residence in the assisted-living facility;

(e) The process for developing and updating the resident services agreement;

(f) For facilities that have special care units for dementia, the additional services provided to meet the special needs of persons with dementia; and

(g) Whether or not the assisted-living facility provides part-time or intermittent complex nursing interventions.

(4) Each assisted-living facility shall enter into a resident services agreement in consultation with each resident.

**Source:** Laws 2004, LB 1005, § 49; Laws 2011, LB401, § 1; Laws 2018, LB439, § 6.  
Effective date July 19, 2018.

## Cross References

Medical Assistance Act, see section 68-901.

**71-5906 Complex nursing interventions; authorized; drugs, devices, biologicals, and supplements; list required; duties.**

(1) An assisted-living facility may provide complex nursing interventions on a part-time or intermittent basis.

(2) Every person seeking admission to an assisted-living facility or the authorized representative of such person shall, upon admission and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by the person, including dosage, instructions for use, and reported use.

(3) Every person residing in an assisted-living facility or the authorized representative of such person shall annually provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by such person, including dosage, instructions for use, and reported use.

(4) An assisted-living facility shall not be subject to disciplinary action by the department for the failure of any person seeking admission to or residing at such facility or the authorized representative of such person to comply with subsections (2) and (3) of this section.

(5) Each assisted-living facility shall provide for a registered nurse to review medication administration policies and procedures and to be responsible for the training of medication aides at such facility.

**Source:** Laws 2004, LB 1005, § 50; Laws 2018, LB439, § 7.  
Effective date July 19, 2018.

**71-5907 Life Safety Code classification.**

For purposes of the Life Safety Code under section 81-502, an assisted-living facility shall be classified as (1) residential board and care if the facility meets the residential board and care classification requirements of the Life Safety Code or (2) limited care if the facility meets the limited care classification requirements of the Life Safety Code.

**Source:** Laws 2004, LB 1005, § 51.

**71-5908 Rules and regulations.**

The department shall adopt and promulgate rules and regulations necessary to carry out the Assisted-Living Facility Act, including, but not limited to, rules and regulations which:

(1) Prohibit the use of chemical or physical restraints at an assisted-living facility;

(2) Require that a criminal background check be conducted on all persons employed as direct care staff at an assisted-living facility;

(3) Establish initial and ongoing training requirements for administrators and approved curriculum for such training. Such requirements shall consist of thirty hours of initial training, including, but not limited to, training in resident care and services, social services, financial management, administration, gerontology, and rules, regulations, and standards relating to the operation of an assisted-living facility. The department may waive initial training requirements established under this subdivision for persons employed as administrators of

assisted-living facilities on January 1, 2005, upon application to the department and documentation of equivalent training or experience satisfactory to the department. Training requirements established under this subdivision shall not apply to an administrator who is also a nursing home administrator or a hospital administrator; and

(4) Provide for acceptance of accreditation by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the assisted-living facility complies with rules and regulations adopted and promulgated under the Assisted-Living Facility Act.

**Source:** Laws 2004, LB 1005, § 52.

**71-5909 Repealed. Laws 2000, LB 819, § 162.**

**ARTICLE 60  
NURSING HOMES**

**Cross References**

**Assistance to the aged, blind, or disabled**, see section 68-1001 et seq.

**Elections**, voter assistance, see section 32-944.

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

**Hospital districts**, see Chapter 23, article 35.

**Long-Term Care Insurance Act**, see section 44-4501.

**Medical Assistance Act**, see section 68-901.

**Medication Aide Act**, see section 71-6718.

**Nursing Home Administrator Practice Act**, see section 38-2401.

**Restrictions on appointment as visitor, guardian, or conservator**, see sections 30-2624, 30-2627, and 30-2639.

**Veterans' homes**, see Chapter 80, article 3.

(a) RECEIVERS

Section	
71-6001.	Transferred to section 71-2084.
71-6002.	Transferred to section 71-2085.
71-6003.	Transferred to section 71-2086.
71-6004.	Transferred to section 71-2092.
71-6005.	Transferred to section 71-2093.
71-6006.	Transferred to section 71-2095.
71-6007.	Transferred to section 71-2096.

(b) NEBRASKA NURSING HOME ACT

71-6008.	Definitions, where found.
71-6009.	Repealed. Laws 1998, LB 1354, § 48.
71-6010.	Department, defined.
71-6011.	Repealed. Laws 2007, LB 296, § 815.
71-6012.	Nursing home, defined.
71-6013.	Resident, defined.
71-6014.	Repealed. Laws 2004, LB 1005, § 145.
71-6015.	Repealed. Laws 2004, LB 1005, § 145.
71-6016.	License, defined.
71-6017.	Licensee, defined.
71-6017.01.	Medicaid, defined.
71-6018.	Repealed. Laws 2000, LB 819, § 162.
71-6018.01.	Nursing facility; nursing requirements; waiver; procedure.
71-6018.02.	Skilled nursing facility; nursing requirements; waiver; procedure.
71-6019.	Access to residents; when permitted.
71-6020.	Visitor; visitation procedures.
71-6021.	Administrator refuse access; hearing; procedure; access authorized.
71-6022.	Transfer or discharge of resident; conditions; procedure; involuntary transfer or discharge; notice requirements.
71-6023.	Involuntary transfer or discharge; notice; contents.

## NURSING HOMES

### Section

- 71-6023.01. Licensure; retention of medicaid resident required; when.
- 71-6024. Repealed. Laws 2000, LB 819, § 162.
- 71-6025. Repealed. Laws 2000, LB 819, § 162.
- 71-6026. Repealed. Laws 2000, LB 819, § 162.
- 71-6027. Repealed. Laws 2000, LB 819, § 162.
- 71-6028. Repealed. Laws 2000, LB 819, § 162.
- 71-6029. Repealed. Laws 2000, LB 819, § 162.
- 71-6030. Repealed. Laws 2000, LB 819, § 162.
- 71-6031. Repealed. Laws 2000, LB 819, § 162.
- 71-6032. Repealed. Laws 2000, LB 819, § 162.
- 71-6033. Repealed. Laws 2000, LB 819, § 162.
- 71-6034. Repealed. Laws 2000, LB 819, § 162.
- 71-6035. Repealed. Laws 2000, LB 819, § 162.
- 71-6036. Repealed. Laws 2000, LB 819, § 162.
- 71-6037. Act, how cited.

### (c) TRAINING REQUIREMENTS

- 71-6038. Terms, defined.
- 71-6039. Nurse aide; qualifications; training requirements; department; duties; licensure as nurse; effect.
- 71-6039.01. Paid dining assistant; qualifications.
- 71-6039.02. Paid dining assistant; permitted activities.
- 71-6039.03. Paid dining assistant; training requirements.
- 71-6039.04. Paid dining assistant registry.
- 71-6039.05. Paid dining assistant; nursing home; duties.
- 71-6039.06. Eligibility for Licensee Assistance Program.
- 71-6040. Department; approve programs and materials.
- 71-6041. Department; adopt rules and regulations.
- 71-6042. Chief medical officer; enforcement; powers.

### (d) NURSING HOME ADVISORY COUNCIL

- 71-6043. Repealed. Laws 2017, LB644, § 21.
- 71-6044. Repealed. Laws 2017, LB644, § 21.
- 71-6045. Repealed. Laws 2017, LB644, § 21.
- 71-6046. Repealed. Laws 2017, LB644, § 21.
- 71-6047. Repealed. Laws 2017, LB644, § 21.
- 71-6048. Repealed. Laws 2017, LB644, § 21.
- 71-6049. Repealed. Laws 2017, LB644, § 21.
- 71-6050. Repealed. Laws 2017, LB644, § 21.
- 71-6051. Repealed. Laws 2017, LB644, § 21.
- 71-6052. Repealed. Laws 2017, LB644, § 21.

### (e) NURSING HOME ADMINISTRATION

- 71-6053. Repealed. Laws 2007, LB 463, § 1319.
- 71-6054. Transferred to section 38-2419.
- 71-6055. Transferred to section 38-2420.
- 71-6056. Transferred to section 38-2421.
- 71-6057. Repealed. Laws 2007, LB 463, § 1319.
- 71-6058. Transferred to section 38-2422.
- 71-6059. Repealed. Laws 2007, LB 463, § 1319.
- 71-6060. Transferred to section 38-2424.
- 71-6061. Repealed. Laws 2007, LB 463, § 1319.
- 71-6062. Transferred to section 38-2418.
- 71-6063. Transferred to section 38-2423.
- 71-6064. Repealed. Laws 2007, LB 463, § 1319.
- 71-6065. Transferred to section 38-2417.
- 71-6066. Repealed. Laws 2007, LB 463, § 1319.
- 71-6067. Repealed. Laws 2007, LB 463, § 1319.
- 71-6068. Repealed. Laws 2007, LB 463, § 1319.

## (a) RECEIVERS

**71-6001 Transferred to section 71-2084.**

**71-6002 Transferred to section 71-2085.**

**71-6003 Transferred to section 71-2086.**

**71-6004 Transferred to section 71-2092.**

**71-6005 Transferred to section 71-2093.**

**71-6006 Transferred to section 71-2095.**

**71-6007 Transferred to section 71-2096.**

## (b) NEBRASKA NURSING HOME ACT

**71-6008 Definitions, where found.**

As used in the Nebraska Nursing Home Act, unless the context otherwise requires, the definitions found in sections 71-6010 to 71-6017.01 shall apply.

**Source:** Laws 1983, LB 235, § 1; Laws 1986, LB 782, § 4; Laws 1998, LB 1354, § 38.

**71-6009 Repealed. Laws 1998, LB 1354, § 48.**

**71-6010 Department, defined.**

Department shall mean the Department of Health and Human Services.

**Source:** Laws 1983, LB 235, § 3; Laws 1996, LB 1044, § 745; Laws 2007, LB296, § 638.

**71-6011 Repealed. Laws 2007, LB 296, § 815.**

**71-6012 Nursing home, defined.**

Nursing home shall mean a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

**Source:** Laws 1983, LB 235, § 5; Laws 2000, LB 819, § 122.

**71-6013 Resident, defined.**

Resident shall mean any person domiciled, residing, or receiving care and treatment, for a period in excess of twenty-four hours, in a nursing home.

**Source:** Laws 1983, LB 235, § 6.

**71-6014 Repealed. Laws 2004, LB 1005, § 145.**

**71-6015 Repealed. Laws 2004, LB 1005, § 145.**

**71-6016 License, defined.**

License shall mean a license to operate a nursing home issued under the Health Care Facility Licensure Act.

**Source:** Laws 1983, LB 235, § 9; Laws 2000, LB 819, § 123.



## Cross References

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

**71-6017 Licensee, defined.**

Licensee shall mean the holder of a license.

**Source:** Laws 1983, LB 235, § 10.

**71-6017.01 Medicaid, defined.**

Medicaid means the medical assistance program established pursuant to the Medical Assistance Act.

**Source:** Laws 1986, LB 782, § 1; Laws 2006, LB 1248, § 78.

## Cross References

Medical Assistance Act, see section 68-901.

**71-6018 Repealed. Laws 2000, LB 819, § 162.****71-6018.01 Nursing facility; nursing requirements; waiver; procedure.**

(1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive either the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(a)(i) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(ii) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(iii) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(b) The department has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The department shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

(4) A waiver granted under this section shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel. The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(5) The department shall provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or an intellectual disability. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident.

**Source:** Laws 2000, LB 819, § 126; Laws 2007, LB296, § 639; Laws 2013, LB23, § 37.

**71-6018.02 Skilled nursing facility; nursing requirements; waiver; procedure.**

(1) Unless a waiver is granted pursuant to subsection (2) of this section, a skilled nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive the evening and night staffing requirements for skilled nursing facilities or for long-term care hospitals certified under Title XVIII of the federal Social Security Act, as amended, except the requirement that the Director of Nursing Services be a licensed registered nurse, if:

(a) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, to hire enough licensed registered nurses and licensed practical nurses to fulfill such requirements. For purposes of this subdivision, diligent efforts include, but are not limited to, offering wages equal to or greater than the community prevailing wage rate being paid such nurses at nursing facilities;

(b) The department determines that a waiver of the requirement will not endanger the health or safety of residents of the facility or hospital; and

(c) The department finds that, for any period in which staffing requirements cannot be met, a licensed registered nurse or a physician is obligated to respond immediately to telephone calls from the facility or hospital.

A waiver granted under this subsection shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel.

(3) The department may waive the requirement that a skilled nursing facility or long-term care hospital certified under Title XVIII of the federal Social Security Act, as amended, provide a licensed registered nurse on duty at the facility or hospital for more than forty hours per week if:

(a) The facility or hospital is located in a nonurban area where the supply of skilled nursing facility services is not sufficient to meet the needs of individuals residing in the area;

(b) The facility or hospital has one full-time licensed registered nurse who is regularly on duty at the facility or hospital forty hours per week; and

(c) The facility or hospital (i) has only patients whose physicians have indicated through orders or admission or progress notes that the patients do not require the services of a licensed registered nurse or a physician for more than forty hours per week or (ii) has made arrangements for a licensed registered nurse or a physician to spend time at the facility or hospital, as determined necessary by the physician, to provide the necessary services on days when the regular, full-time licensed registered nurse is not on duty.

A waiver may be granted under this subsection for a period of up to one year by the department.

**Source:** Laws 2000, LB 819, § 127.

#### **71-6019 Access to residents; when permitted.**

Any employee, representative, or agent of the department, the office of the state long-term care ombudsman, a law enforcement agency, or the local county attorney shall be permitted access at any hour to any resident of any nursing home. Friends and relatives of a resident shall have access during normal visiting and business hours of the facility. Representatives of community legal services programs, volunteers, and members of community organizations shall have access, after making arrangements with proper personnel of the home, during regular visiting and business hours if the purpose of such access is to:

(1) Visit, talk with, and make personal, social, and legal services available to all residents;

(2) Inform residents of their rights and entitlements and their corresponding obligations under federal and state laws by means of educational materials and discussions in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or

(4) Engage in other methods of asserting, advising, and representing residents so as to extend to them full enjoyment of their rights.

**Source:** Laws 1983, LB 235, § 12; Laws 1992, LB 677, § 32; Laws 1996, LB 1044, § 747; Laws 2007, LB296, § 640.

#### **71-6020 Visitor; visitation procedures.**

Any person entering a nursing home pursuant to section 71-6019 shall first notify appropriate nursing home personnel of his or her presence. He or she shall, upon request, produce identification to establish his or her identity. No such person shall enter the immediate living area of any resident without first identifying himself or herself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected.

**Source:** Laws 1983, LB 235, § 13.

**71-6021 Administrator refuse access; hearing; procedure; access authorized.**

(1) Notwithstanding the provisions of sections 71-6019 and 71-6020, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 71-6019 and 71-6020 shall constitute a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections 71-452 to 71-455.

(2) Nothing in sections 71-6019 to 71-6021 shall be construed to prevent (a) an employee of the department, acting in his or her official capacity, from entering a nursing home for any inspection authorized by the act or any rule or regulation adopted and promulgated pursuant thereto or (b) a state long-term care ombudsman or an ombudsman advocate, acting in his or her official capacity, from entering a nursing home to conduct an investigation authorized by any rules and regulations promulgated by the department.

**Source:** Laws 1983, LB 235, § 14; Laws 1992, LB 677, § 33; Laws 1996, LB 1044, § 748; Laws 2000, LB 819, § 124; Laws 2007, LB296, § 641.

**71-6022 Transfer or discharge of resident; conditions; procedure; involuntary transfer or discharge; notice requirements.**

(1) A nursing home shall not transfer or discharge a resident except (a) upon his or her consent, (b) for medical reasons, (c) for the resident's safety or the safety of other residents or nursing home employees, (d) when rehabilitation is such that movement to a less restrictive setting is possible, or (e) for nonpayment for the resident's stay, except as prohibited by section 71-6023.01 or by Title XVIII or XIX of the Social Security Act as amended.

(2) Involuntary transfer from a nursing home or discharge of a resident shall be preceded by a minimum written notice of thirty days, except when subdivision (d) of subsection (1) of this section applies, five days written notice shall be given to the resident or his or her representative and when subdivision (e) of subsection (1) of this section applies, a resident shall be given ten days' written notice if his or her charges are five days or more in arrears. This subsection shall not apply when (a) an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician or (b) the transfer is mandated

by the physical safety of other residents or nursing home employees, as documented in the nursing home records.

**Source:** Laws 1983, LB 235, § 15; Laws 1986, LB 782, § 5.

**71-6023 Involuntary transfer or discharge; notice; contents.**

(1) The notice required by subsection (2) of section 71-6022 shall contain:

- (a) The stated reason for the proposed transfer or discharge;
- (b) The effective date of the proposed transfer or discharge; and
- (c) In not less than twelve-point type, the text of section 71-445.

(2) A copy of the notice required by subsection (2) of section 71-6022 shall be transmitted to the resident and the resident's representative, if a representative has been designated.

**Source:** Laws 1983, LB 235, § 16; Laws 2000, LB 819, § 125.

**71-6023.01 Licensure; retention of medicaid resident required; when.**

A nursing home seeking or renewing a license shall be required to retain a resident whose economic status changes so that such resident receives medicaid or becomes eligible for medicaid if such resident has resided in the nursing home for a period of at least one year after July 17, 1986, unless ten percent of such nursing home's residents are receiving medicaid or are eligible for medicaid. Such requirement shall constitute a condition of licensure. The department shall notify the nursing home of such requirement ninety days prior to the renewal of a license or upon application for a license. For purposes of this section, nursing homes shall include long-term care hospitals, including long-term care units of a hospital. This section shall not apply to the Nebraska veterans homes established pursuant to Chapter 80, article 3.

**Source:** Laws 1986, LB 782, § 2; Laws 1990, LB 1064, § 30.

**71-6024 Repealed. Laws 2000, LB 819, § 162.**

**71-6025 Repealed. Laws 2000, LB 819, § 162.**

**71-6026 Repealed. Laws 2000, LB 819, § 162.**

**71-6027 Repealed. Laws 2000, LB 819, § 162.**

**71-6028 Repealed. Laws 2000, LB 819, § 162.**

**71-6029 Repealed. Laws 2000, LB 819, § 162.**

**71-6030 Repealed. Laws 2000, LB 819, § 162.**

**71-6031 Repealed. Laws 2000, LB 819, § 162.**

**71-6032 Repealed. Laws 2000, LB 819, § 162.**

**71-6033 Repealed. Laws 2000, LB 819, § 162.**

**71-6034 Repealed. Laws 2000, LB 819, § 162.**

**71-6035 Repealed. Laws 2000, LB 819, § 162.**

**71-6036 Repealed. Laws 2000, LB 819, § 162.****71-6037 Act, how cited.**

Sections 71-6008 to 71-6037 shall be known and may be cited as the Nebraska Nursing Home Act.

**Source:** Laws 1983, LB 235, § 30; Laws 1986, LB 782, § 6; Laws 2000, LB 819, § 128.

## (c) TRAINING REQUIREMENTS

**71-6038 Terms, defined.**

For purposes of sections 71-6038 to 71-6042:

(1) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral or intravenous feedings;

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

(3) Nurse aide means any person employed by a facility described in subsection (1) of section 71-6039 for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents other than a paid dining assistant or a licensed registered or practical nurse;

(4) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-421, 71-422, 71-424, and 71-429; and

(5) Paid dining assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the feeding of residents other than a nurse aide or a licensed registered or practical nurse.

**Source:** Laws 1983, LB 273, § 1; Laws 1984, LB 416, § 10; Laws 1988, LB 190, § 4; Laws 1990, LB 1080, § 6; Laws 1994, LB 1210, § 148; Laws 1996, LB 1044, § 749; Laws 1998, LB 1354, § 40; Laws 2004, LB 1005, § 110; Laws 2007, LB296, § 642; Laws 2007, LB463, § 1235; Laws 2017, LB417, § 13.

**71-6039 Nurse aide; qualifications; training requirements; department; duties; licensure as nurse; effect.**

(1) No person shall act as a nurse aide in a facility or a distinct part of a facility that provides care as defined in section 71-405, 71-406, 71-409, 71-412, 71-416, 71-417, 71-418, 71-419, 71-420, 71-421, 71-422, 71-424, 71-426, 71-427, or 71-429 unless such person:

(a) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(b) Is able to speak and understand the English language or a language understood by a substantial portion of the facility residents; and

(c) Has successfully completed a basic course of training approved by the department for nurse aides within one hundred twenty days of initial employment in the capacity of a nurse aide.

(2)(a) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not act as a nurse aide in a facility described in subsection (1) of this section.

(b) If a person registered as a nurse aide becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nurse aide becomes null and void as of the date of licensure.

(c) A person listed on the Nurse Aide Registry with respect to whom a finding of conviction has been placed on the registry may petition the department to have such finding removed at any time after one year has elapsed since the date such finding was placed on the registry.

(3) The department may prescribe a curriculum for training nurse aides and may adopt and promulgate rules and regulations for such courses of training. The content of the courses of training and competency evaluation programs shall be consistent with federal requirements unless exempted. The department may approve courses of training if such courses of training meet the requirements of this section. Such courses of training shall include instruction on the responsibility of each nurse aide to report suspected abuse or neglect pursuant to sections 28-372 and 28-711. Nursing homes may carry out approved courses of training within the nursing home, except that nursing homes may not conduct the competency evaluation part of the program. The prescribed training shall be administered by a licensed registered nurse.

(4) For nurse aides at intermediate care facilities for persons with developmental disabilities, such courses of training shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training, and for nurse aides at all nursing homes other than intermediate care facilities for persons with developmental disabilities, such courses shall be no less than seventy-five hours in duration.

(5) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

**Source:** Laws 1983, LB 273, § 2; Laws 1984, LB 416, § 11; Laws 1986, LB 921, § 11; Laws 1988, LB 463, § 49; Laws 1990, LB 1080, § 7; Laws 1994, LB 1210, § 149; Laws 2004, LB 1005, § 111; Laws 2007, LB185, § 43; Laws 2007, LB463, § 1236; Laws 2013, LB23, § 38; Laws 2017, LB417, § 14.

#### **71-6039.01 Paid dining assistant; qualifications.**

No person shall act as a paid dining assistant in a nursing home unless such person:

- (1) Is at least sixteen years of age;
- (2) Is able to speak and understand the English language or a language understood by the nursing home resident being fed by such person;
- (3) Has successfully completed at least eight hours of training as prescribed by the department for paid dining assistants;
- (4) Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and

(5) Has no adverse findings on the central registry created in section 28-718 if the nursing home which employs such person as a paid dining assistant has at any one time more than one resident under the age of nineteen years.

**Source:** Laws 2004, LB 1005, § 115; Laws 2014, LB853, § 47.

**71-6039.02 Paid dining assistant; permitted activities.**

A paid dining assistant shall:

(1) Only feed residents who have no complicated feeding problems as selected by the nursing home based on the resident's latest assessment and plan of care and a determination by the charge nurse that the resident's condition at the time of such feeding meets that plan of care;

(2) Work under the supervision of a licensed registered or practical nurse who is in the nursing home and immediately available; and

(3) Call a supervisor for help in an emergency.

**Source:** Laws 2004, LB 1005, § 116.

**71-6039.03 Paid dining assistant; training requirements.**

(1) The department may prescribe a curriculum for training paid dining assistants and may adopt and promulgate rules and regulations for such courses of training. Such courses shall be no less than eight hours in duration. The department may approve courses of training for paid dining assistants that meet the requirements of this section. Nursing homes may carry out approved courses of training and competency evaluation programs at the nursing home. Training of paid dining assistants shall be administered by a licensed registered nurse.

(2) Courses of training and competency evaluation programs for paid dining assistants shall include:

(a) Feeding techniques;

(b) Assistance with feeding and hydration;

(c) Communication and interpersonal skills;

(d) Appropriate responses to resident behavior;

(e) Safety and emergency procedures, including the abdominal thrust maneuver;

(f) Infection control;

(g) Resident rights;

(h) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse;

(i) Special needs; and

(j) Abuse and neglect, including the responsibility to report suspected abuse or neglect pursuant to sections 28-372 and 28-711.

(3) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

**Source:** Laws 2004, LB 1005, § 117.

**71-6039.04 Paid dining assistant registry.**



The department shall maintain a paid dining assistant registry and shall include in the registry individuals who have successfully completed a paid dining assistant course of training and a competency evaluation program.

**Source:** Laws 2004, LB 1005, § 118.

**71-6039.05 Paid dining assistant; nursing home; duties.**

Each nursing home shall maintain (1) a record of all paid dining assistants employed by such facility, (2) verification of successful completion of a training course for each paid dining assistant, and (3) verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central registry created in section 28-718, if applicable under section 71-6039.01, with respect to each paid dining assistant.

**Source:** Laws 2004, LB 1005, § 119; Laws 2014, LB853, § 48.

**71-6039.06 Eligibility for Licensee Assistance Program.**

Nurse aides and paid dining assistants are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

**Source:** Laws 2007, LB463, § 1240; Laws 2017, LB417, § 15.

**71-6040 Department; approve programs and materials.**

The department shall approve all courses, lectures, seminars, course materials, or other instructional programs used to meet the requirements of sections 71-6038 to 71-6042.

**Source:** Laws 1983, LB 273, § 3; Laws 1996, LB 1044, § 750; Laws 2004, LB 1005, § 112; Laws 2007, LB463, § 1237.

**71-6041 Department; adopt rules and regulations.**

To protect the health, safety, and welfare of nursing home residents and the public, the department shall adopt and promulgate such rules and regulations as are necessary for the effective administration of sections 71-6038 to 71-6042. Such rules and regulations shall be consistent with federal requirements developed by the United States Department of Health and Human Services.

**Source:** Laws 1983, LB 273, § 4; Laws 1994, LB 1210, § 150; Laws 1996, LB 1044, § 751; Laws 2004, LB 1005, § 113; Laws 2007, LB463, § 1238.

**71-6042 Chief medical officer; enforcement; powers.**

The chief medical officer as designated in section 81-3115 shall have the authority to enforce sections 71-6038 to 71-6042 and rules and regulations adopted under section 71-6041 by any of the following means: Denial, suspension, restriction, or revocation of a nursing home's license, refusal of the renewal of a nursing home's license, restriction of a nursing home's admissions, or any other enforcement provision granted to the department.

**Source:** Laws 1983, LB 273, § 5; Laws 2004, LB 1005, § 114; Laws 2007, LB296, § 643; Laws 2007, LB463, § 1239.

(d) NURSING HOME ADVISORY COUNCIL

**71-6043 Repealed. Laws 2017, LB644, § 21.**

- 71-6044 Repealed. Laws 2017, LB644, § 21.
- 71-6045 Repealed. Laws 2017, LB644, § 21.
- 71-6046 Repealed. Laws 2017, LB644, § 21.
- 71-6047 Repealed. Laws 2017, LB644, § 21.
- 71-6048 Repealed. Laws 2017, LB644, § 21.
- 71-6049 Repealed. Laws 2017, LB644, § 21.
- 71-6050 Repealed. Laws 2017, LB644, § 21.
- 71-6051 Repealed. Laws 2017, LB644, § 21.
- 71-6052 Repealed. Laws 2017, LB644, § 21.

(e) NURSING HOME ADMINISTRATION

- 71-6053 Repealed. Laws 2007, LB 463, § 1319.
- 71-6054 Transferred to section 38-2419.
- 71-6055 Transferred to section 38-2420.
- 71-6056 Transferred to section 38-2421.
- 71-6057 Repealed. Laws 2007, LB 463, § 1319.
- 71-6058 Transferred to section 38-2422.
- 71-6059 Repealed. Laws 2007, LB 463, § 1319.
- 71-6060 Transferred to section 38-2424.
- 71-6061 Repealed. Laws 2007, LB 463, § 1319.
- 71-6062 Transferred to section 38-2418.
- 71-6063 Transferred to section 38-2423.
- 71-6064 Repealed. Laws 2007, LB 463, § 1319.
- 71-6065 Transferred to section 38-2417.
- 71-6066 Repealed. Laws 2007, LB 463, § 1319.
- 71-6067 Repealed. Laws 2007, LB 463, § 1319.
- 71-6068 Repealed. Laws 2007, LB 463, § 1319.

ARTICLE 61

OCCUPATIONAL THERAPY

Cross References

Occupational Therapy Practice Act, see section 38-2501.  
Uniform Credentialing Act, see section 38-101.

Section  
71-6101. Transferred to section 38-2501.

Section  
71-6102. Transferred to section 38-2502.  
71-6103. Transferred to section 38-2503.  
71-6104. Transferred to section 38-2516.  
71-6105. Transferred to section 38-2517.  
71-6106. Transferred to section 38-2518.  
71-6107. Transferred to section 38-2519.  
71-6108. Transferred to section 38-2520.  
71-6109. Repealed. Laws 2007, LB 463, § 1319.  
71-6110. Repealed. Laws 2007, LB 463, § 1319.  
71-6111. Repealed. Laws 2007, LB 463, § 1319.  
71-6112. Repealed. Laws 2007, LB 463, § 1319.  
71-6113. Transferred to section 38-2521.  
71-6114. Transferred to section 38-2524.  
71-6115. Transferred to section 38-2515.  
71-6116. Repealed. Laws 2003, LB 242, § 154.  
71-6117. Transferred to section 38-2525.  
71-6118. Transferred to section 38-2526.  
71-6119. Transferred to section 38-2527.  
71-6120. Transferred to section 38-2528.  
71-6121. Transferred to section 38-2529.  
71-6122. Transferred to section 38-2530.  
71-6123. Transferred to section 38-2531.

**71-6101 Transferred to section 38-2501.**

**71-6102 Transferred to section 38-2502.**

**71-6103 Transferred to section 38-2503.**

**71-6104 Transferred to section 38-2516.**

**71-6105 Transferred to section 38-2517.**

**71-6106 Transferred to section 38-2518.**

**71-6107 Transferred to section 38-2519.**

**71-6108 Transferred to section 38-2520.**

**71-6109 Repealed. Laws 2007, LB 463, § 1319.**

**71-6110 Repealed. Laws 2007, LB 463, § 1319.**

**71-6111 Repealed. Laws 2007, LB 463, § 1319.**

**71-6112 Repealed. Laws 2007, LB 463, § 1319.**

**71-6113 Transferred to section 38-2521.**

**71-6114 Transferred to section 38-2524.**

**71-6115 Transferred to section 38-2515.**

**71-6116 Repealed. Laws 2003, LB 242, § 154.**

**71-6117 Transferred to section 38-2525.**

**71-6118 Transferred to section 38-2526.**

**71-6119 Transferred to section 38-2527.**

**71-6120 Transferred to section 38-2528.**

**71-6121 Transferred to section 38-2529.**

**71-6122 Transferred to section 38-2530.**

**71-6123 Transferred to section 38-2531.**

## ARTICLE 62

### NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

#### Cross References

**Asbestos Control Act**, see section 71-6301.

**Home health aides**, see sections 71-6601 to 71-6615.

**Medication Aide Act**, see section 71-6718.

**Nursing aides**, see sections 71-6038 to 71-6042.

**Occupational Board Reform Act**, see section 84-933.

**Paid dining assistants**, see section 71-6039.01 et seq.

**Residential Lead-Based Paint Professions Practice Act**, see section 71-6318.

**Rules and regulations for regulated health professions and occupations**, see section 71-2610.01.

**State Board of Health**, see section 71-2601 et seq.

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

#### Section

71-6201.	Act, how cited.
71-6202.	Purpose of act.
71-6203.	Definitions, where found.
71-6204.	Applicant group, defined.
71-6205.	Board, defined.
71-6206.	Certificate or certification, defined.
71-6206.01.	Chairperson, defined.
71-6207.	Committee, defined.
71-6207.01.	Credentialing, defined.
71-6207.02.	Directed review, defined.
71-6208.	Director, defined.
71-6208.01.	Division, defined.
71-6209.	Grandfather clause, defined.
71-6210.	Health profession, defined.
71-6211.	Health professional group not previously regulated, defined.
71-6212.	Inspection, defined.
71-6213.	License, licensing, or licensure, defined.
71-6214.	Professional license, defined.
71-6215.	Practitioner, defined.
71-6216.	Public member, defined.
71-6217.	Registration, defined.
71-6218.	Regulated health professions, defined.
71-6219.	Regulatory entity, defined.
71-6219.01.	Review body, defined.
71-6220.	State agency, defined.
71-6220.01.	Welfare, defined.
71-6221.	Regulation of health profession; change in scope of practice; when.
71-6222.	Least restrictive method of regulation; how implemented.
71-6223.	Letter of intent; application; contents.
71-6223.01.	Application fee; disposition; waiver.
71-6223.02.	Directed review; initiation; procedure; report.
71-6224.	Technical committee; appointment; membership; meetings; duties.
71-6225.	Board; review technical committee report; report to director.
71-6226.	Director; prepare final report; recommendations.
71-6227.	Rules and regulations; professional and clerical services; expenses.
71-6228.	Repealed. Laws 2012, LB 834, § 23.
71-6229.	Act, how construed.
71-6230.	Repealed. Laws 1993, LB 536, § 128.

**71-6201 Act, how cited.**

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

**Source:** Laws 1985, LB 407, § 1; Laws 1988, LB 384, § 1; Laws 1993, LB 536, § 102; Laws 2012, LB834, § 3.

**71-6202 Purpose of act.**

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions which are not licensed or regulated and those licensed or regulated health professions which seek to change their scope of practice. The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the public from harm.

**Source:** Laws 1985, LB 407, § 2; Laws 2012, LB834, § 4.

**71-6203 Definitions, where found.**

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

**Source:** Laws 1985, LB 407, § 3; Laws 1988, LB 384, § 2; Laws 1993, LB 536, § 103; Laws 2012, LB834, § 5.

**71-6204 Applicant group, defined.**

Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated by the division or which proposes to change the scope of practice of a regulated health profession.

**Source:** Laws 1985, LB 407, § 4; Laws 2012, LB834, § 6.

**71-6205 Board, defined.**

Board shall mean the State Board of Health.

**Source:** Laws 1985, LB 407, § 5.

**71-6206 Certificate or certification, defined.**

Certificate or certification shall mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed tasks.

**Source:** Laws 1985, LB 407, § 6; Laws 2012, LB834, § 7.

**71-6206.01 Chairperson, defined.**

Chairperson shall mean the chairperson of the Health and Human Services Committee of the Legislature.

**Source:** Laws 1993, LB 536, § 104.

**71-6207 Committee, defined.**

Committee shall mean the technical committee created in section 71-6224.

**Source:** Laws 1985, LB 407, § 7.

**71-6207.01 Credentialing, defined.**

Credentialing shall mean the process of regulating health professions by means of registration, certification, or licensure.

**Source:** Laws 1988, LB 384, § 3.

**71-6207.02 Directed review, defined.**

Directed review shall mean a review conducted pursuant to section 71-6223.02 in which (1) there is no applicant group or application, (2) the duty of the committee is to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director is to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

**Source:** Laws 1993, LB 536, § 105; Laws 2015, LB90, § 1.

**71-6208 Director, defined.**

Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

**Source:** Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652; Laws 2012, LB834, § 8.

**71-6208.01 Division, defined.**

Division shall mean the Division of Public Health of the Department of Health and Human Services.

**Source:** Laws 2012, LB834, § 9.

**71-6209 Grandfather clause, defined.**

Grandfather clause shall mean a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

**Source:** Laws 1985, LB 407, § 9.

**71-6210 Health profession, defined.**

Health profession shall mean a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

**Source:** Laws 1985, LB 407, § 10; Laws 2012, LB834, § 10.

**71-6211 Health professional group not previously regulated, defined.**

Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under the

Uniform Credentialing Act, who are determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

**Source:** Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241; Laws 2012, LB834, § 11.

#### Cross References

Uniform Credentialing Act, see section 38-101.

#### **71-6212 Inspection, defined.**

Inspection shall mean the periodic examination of practitioners by a state agency in order to ascertain whether the practitioner's occupation is being carried out in a manner consistent with the public health, safety, and welfare.

**Source:** Laws 1985, LB 407, § 12.

#### **71-6213 License, licensing, or licensure, defined.**

License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed tasks and use a particular title.

**Source:** Laws 1985, LB 407, § 13; Laws 2012, LB834, § 12.

#### **71-6214 Professional license, defined.**

Professional license shall mean an individual nontransferable authorization to work in a health profession based on qualifications which include graduation from an accredited or approved program and acceptable performance on a qualifying examination or series of examinations.

**Source:** Laws 1985, LB 407, § 14.

#### **71-6215 Practitioner, defined.**

Practitioner shall mean an individual who has achieved knowledge and skill by the practice of a specified health profession and is actively engaged in such profession.

**Source:** Laws 1985, LB 407, § 15.

#### **71-6216 Public member, defined.**

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest

in the health profession being regulated or an activity directly related to the health profession being regulated.

**Source:** Laws 1985, LB 407, § 16; Laws 2012, LB834, § 13.

**71-6217 Registration, defined.**

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity and may be required to meet any test of education, experience, or training in order to render services.

**Source:** Laws 1985, LB 407, § 17; Laws 1988, LB 384, § 5; Laws 2012, LB834, § 14.

**71-6218 Regulated health professions, defined.**

Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

**Source:** Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242; Laws 2012, LB834, § 15.

**Cross References**

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

**71-6219 Regulatory entity, defined.**

Regulatory entity shall mean any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

**Source:** Laws 1985, LB 407, § 19.

**71-6219.01 Review body, defined.**

Review body shall mean the committee, the board, or the director charged with reviewing applications for new credentialing or change in scope of practice.

**Source:** Laws 1988, LB 384, § 6.

**71-6220 State agency, defined.**



State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

**Source:** Laws 1985, LB 407, § 20; Laws 1991, LB 81, § 5.

**71-6220.01 Welfare, defined.**

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

**Source:** Laws 1988, LB 384, § 4.

**71-6221 Regulation of health profession; change in scope of practice; when.**

(1) A health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public;

(b) Regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest;

(c) The public needs assurance from the state of initial and continuing professional ability; and

(d) The public cannot be protected by a more effective alternative.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public;

(b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be protected by a more effective alternative.

(3) The scope of practice of a regulated health profession shall be changed only when:

(a) The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice;

(b) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public;

(c) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;

(e) There are appropriate postprofessional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and

(f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

(4) The division shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

**Source:** Laws 1985, LB 407, § 21; Laws 1988, LB 384, § 7; Laws 1996, LB 1044, § 759; Laws 2007, LB296, § 653; Laws 2012, LB834, § 16.

#### **71-6222 Least restrictive method of regulation; how implemented.**

After evaluating the criteria in sections 71-6221 to 71-6223 and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and this section, as follows:

(1) When the threat to the public health, safety, welfare, or economic well-being is relatively small, regulation shall be by means other than direct credentialing of the health profession. Such regulation may include, but shall not be limited to:

(a) Inspection requirements;

(b) Enabling an appropriate state agency to bring an end to a harmful practice by injunctive relief in court;

(c) Regulating the business activity or entity providing the service rather than the employees of the business or entity; or

(d) Regulating or modifying the regulation of the health profession supervising or responsible for the service being performed;

(2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration;

(3) When the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification; or

(4) When it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

**Source:** Laws 1985, LB 407, § 22; Laws 1988, LB 384, § 8.

#### **71-6223 Letter of intent; application; contents.**

(1) An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review.

(2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days after the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days after receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed.

(3) The application shall include an explanation of:

(a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;

(b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;

(c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;

(d) The extent to which regulation or the change of scope of practice might harm the public;

(e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

(f) A description of the health professional group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice;

(g) The role and availability of third-party reimbursement for the services provided by the applicant group;

(h) The experience of other jurisdictions in regulating the practitioners affected by the application;

(i) The expected costs of regulation, including (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (ii) the cost to the state and to the general public of implementing the proposed legislation; and

(j) Other information relevant to the requested review as determined by the division.

**Source:** Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9; Laws 2012, LB834, § 17.

**71-6223.01 Application fee; disposition; waiver.**

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. The division shall remit all application fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

(1) The applicant group is an agency of state government;

(2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or

(3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

**Source:** Laws 1988, LB 384, § 14; Laws 2012, LB834, § 18.

**71-6223.02 Directed review; initiation; procedure; report.**

At any time the director and the chairperson may initiate a directed review or the chairperson in consultation with the members of the Health and Human Services Committee of the Legislature may initiate a directed review. The purpose of a directed review is to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson, or the chairperson in consultation with the Health and Human Services Committee, shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the technical committee in a directed review shall be to investigate the issues that are the subject of the review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the technical committee's proposal, other options considered, and other relevant information.

**Source:** Laws 1993, LB 536, § 106; Laws 2015, LB90, § 2.

**71-6224 Technical committee; appointment; membership; meetings; duties.**

(1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than one member of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. The committee shall serve as a factfinding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public factfinding hearings. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

(4) Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections

71-6221 to 71-6223, shall make written findings on all criteria, and shall make a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation.

**Source:** Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20; Laws 2012, LB834, § 19.

Cross References

**Open Meetings Act**, see section 84-1407.

**71-6225 Board; review technical committee report; report to director.**

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (4) of section 71-6224.

**Source:** Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11; Laws 2012, LB834, § 20.

**71-6226 Director; prepare final report; recommendations.**

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (4) of section 71-6224. The final report shall be submitted electronically to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than twelve months after the application is submitted to the director and found to be complete and shall be made available electronically to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

**Source:** Laws 1985, LB 407, § 26; Laws 1988, LB 384, § 12; Laws 2012, LB782, § 123; Laws 2012, LB834, § 21.

**71-6227 Rules and regulations; professional and clerical services; expenses.**

(1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

**Source:** Laws 1985, LB 407, § 27.

**71-6228 Repealed. Laws 2012, LB 834, § 23.**

**71-6229 Act, how construed.**

Nothing in the Nebraska Regulation of Health Professions Act shall apply to the practice of the religious tenets of any recognized church or religious denomination which includes healing solely by spiritual means through prayer.

**Source:** Laws 1985, LB 407, § 29.

**71-6230 Repealed. Laws 1993, LB 536, § 128.**

**ARTICLE 63**

**ENVIRONMENTAL HAZARDS**

**Cross References**

**State Board of Health**, powers and duties, see section 71-2610.01.  
**Uniform Credentialing Act**, see section 38-101.

(a) ASBESTOS CONTROL

Section	
71-6301.	Terms, defined.
71-6302.	Asbestos project; business entity; license required; exceptions; training course.
71-6303.	Administration of act; rules and regulations; fees; department; powers and duties.
71-6304.	Business entity; license; qualifications.
71-6305.	License; application; contents.
71-6306.	License; term; renewal.
71-6307.	Licensee or business entity; records required; contents.
71-6308.	Repealed. Laws 1988, LB 1073, § 20.
71-6309.	Waiver of requirements; when authorized.
71-6309.01.	Repealed. Laws 1995, LB 406, § 96.
71-6310.	Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications.
71-6310.01.	Asbestos occupations; training courses; approval.

## ENVIRONMENTAL HAZARDS

- Section
- 71-6310.02. Asbestos occupations; license; renewal; continuing competency requirements.
- 71-6310.03. Project designer or project monitor; duties.
- 71-6310.04. Fees.
- 71-6311. Governmental body; contract with nonlicensee prohibited.
- 71-6312. Violations; penalties.
- 71-6313. Violations; action to enjoin.
- 71-6314. Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement.
- 71-6315. Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.
- 71-6316. Act; districts exempt.
- 71-6317. Asbestos Control Act; act, how cited.
- (b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT
- 71-6318. Residential Lead-Based Paint Professions Practice Act; act, how cited.
- 71-6318.01. Act; purpose and applicability.
- 71-6319. Repealed. Laws 1999, LB 863, § 57.
- 71-6319.01. Definitions, where found.
- 71-6319.02. Abatement or abatement project, defined.
- 71-6319.03. Accredited training program, defined.
- 71-6319.04. Licensed abatement worker, defined.
- 71-6319.05. Licensed firm, defined.
- 71-6319.06. Licensed inspector, defined.
- 71-6319.07. Licensed project designer, defined.
- 71-6319.08. Licensed risk assessor, defined.
- 71-6319.09. Licensed supervisor, defined.
- 71-6319.10. Licensed visual lead-hazard advisor, defined.
- 71-6319.11. Child-occupied facility, defined.
- 71-6319.12. Common area, defined.
- 71-6319.13. Component or building component, defined.
- 71-6319.14. Containment, defined.
- 71-6319.15. Department, defined.
- 71-6319.16. Deteriorated paint, defined.
- 71-6319.17. Repealed. Laws 2007, LB 296, § 815.
- 71-6319.18. Elevated blood-lead level, defined.
- 71-6319.19. Encapsulant, defined.
- 71-6319.20. Encapsulation, defined.
- 71-6319.21. Enclosure, defined.
- 71-6319.22. Firm, defined.
- 71-6319.23. Guest instructor, defined.
- 71-6319.24. Inspection, defined.
- 71-6319.25. Interim controls, defined.
- 71-6319.26. Lead-based paint, defined.
- 71-6319.27. Lead-based paint activities, defined.
- 71-6319.28. Lead-based paint hazard, defined.
- 71-6319.29. Lead-based paint profession, defined.
- 71-6319.30. Lead-contaminated dust, defined.
- 71-6319.31. Lead-contaminated soil, defined.
- 71-6319.32. Person, defined.
- 71-6319.33. Principal instructor, defined.
- 71-6319.34. Reduction, defined.
- 71-6319.35. Residential dwelling, defined.
- 71-6319.36. Risk assessment, defined.
- 71-6319.37. Target housing, defined.
- 71-6319.38. Training curriculum, defined.
- 71-6319.39. Training program manager, defined.
- 71-6319.40. Visual lead-hazard screen, defined.
- 71-6320. Lead abatement project; firm; license required.
- 71-6321. Administration of act; rules and regulations; department; powers and duties.

§ 71-6301

PUBLIC HEALTH AND WELFARE

Section	
71-6322.	Firm; license; qualifications.
71-6323.	License; application; contents; current certificate holder; how treated.
71-6324.	Repealed. Laws 1999, LB 863, § 57.
71-6325.	Repealed. Laws 1999, LB 863, § 57.
71-6326.	Individuals; license required; qualifications; term; renewal; applications; current certificate holder; how treated.
71-6327.	Lead-based paint professions; license; application; disciplinary actions; fees; continuing competency requirements.
71-6328.	Governmental body; acceptance of bid; limitation.
71-6328.01.	Reciprocity.
71-6328.02.	Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.
71-6329.	Violations; penalties.
71-6330.	Violations; action to enjoin.
71-6331.	Violations; disciplinary actions; civil penalty; procedure; appeal; lien; enforcement.
71-6331.01.	Environmental audits; applicability.
71-6332.	Repealed. Laws 1999, LB 863, § 57.
71-6333.	Repealed. Laws 1999, LB 863, § 57.

(a) ASBESTOS CONTROL

**71-6301 Terms, defined.**

For purposes of the Asbestos Control Act, unless the context otherwise requires:

(1) Asbestos means asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;

(2) Asbestos encapsulation project means activities which include the coating of asbestos-containing surface material with a bridging or penetrating type of sealing material for the intended purpose of preventing the continued release of asbestos fibers from the material into the air. Such project does not include the repainting of a previously painted nonfriable asbestos-containing surface which is not damaged primarily for improving the appearance of such surface;

(3) Asbestos enclosure project means activities which physically isolate friable asbestos and which control and contain fibers released from asbestos-containing material by constructing a permanent airtight barrier between the asbestos-containing material and the occupied building space;

(4) Asbestos occupation means an inspector, management planner, project designer, project monitor, supervisor, or worker;

(5) Asbestos project means an asbestos enclosure project, an asbestos encapsulation project, an asbestos removal project, an asbestos-related demolition project, or an asbestos-related dismantling project but does not include (a) any activities which affect three square feet or less or three linear feet or less of asbestos-containing material on or in a structure or equipment or any appurtenances thereto or (b) any activities physically performed by a homeowner, a member of the homeowner's family, or an unpaid volunteer on or in the homeowner's residential property of four units or less;

(6) Asbestos removal project means activities which include the physical removal of friable asbestos-containing material from the surface of a structure or from equipment which is intended to remain in place after the removal. Such project also includes the physical removal of asbestos from a structure or



equipment after such structure or equipment has been removed as part of an asbestos-related dismantling project;

(7) Asbestos-related demolition project means activities which include the razing of all or a portion of a structure which contains friable asbestos-containing materials or other asbestos-containing materials which may become friable when such materials are cut, crushed, ground, abraded, or pulverized;

(8) Asbestos-related dismantling project means activities which include the disassembly, handling, and moving of the components of any structure or equipment which has been coated with asbestos-containing material without first removing such material from the structure or from the equipment;

(9) Business entity means a partnership, limited liability company, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern involved in an asbestos project except an entity solely involved as a management planner or project designer;

(10) Demolition means the wrecking, razing, or removal of any structure or load-supporting structural item of any structure, including any related material handling operations, and includes the intentional burning of any structure;

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

(12) Enclosure means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air;

(13) Friable asbestos means asbestos in a form which can be crumbled, pulverized, or reduced to powder by hand pressure;

(14) Inspector means an individual who is licensed by the department to identify and assess the condition of asbestos-containing material;

(15) Instructor means an individual who is approved by the department to teach an asbestos-related training course;

(16) License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization;

(17) Management planner means an individual who is licensed by the department to assess the hazard of materials containing asbestos, to determine the appropriate response actions, and to write management plans;

(18) Project designer means an individual who is licensed by the department to formulate plans and write specifications for conducting asbestos projects;

(19) Project monitor means an individual who is licensed by the department to observe abatement activities performed by contractors, to represent the building owner to ensure work is completed according to specifications and in compliance with statutes and regulations, and to perform air monitoring to determine final clearance;

(20) Project review means review of a licensed business entity's proposed asbestos project;

(21) Renovation means the altering of a structure, one or more structural items, or one or more equipment items in any way, including any asbestos project performed on a structure, structural item, or equipment item;

(22) Supervisor means an individual who is licensed by the department to supervise and direct an asbestos project in accordance with the Asbestos

Control Act and the rules and regulations adopted and promulgated pursuant to such act; and

(23) Worker means an individual who is licensed by the department to clean, handle, repair, remove, encapsulate, haul, dispose of, or otherwise work with asbestos material in a nonsupervisory capacity.

**Source:** Laws 1986, LB 1051, § 1; Laws 1988, LB 1073, § 1; Laws 1990, LB 923, § 1; Laws 1993, LB 121, § 454; Laws 1995, LB 406, § 73; Laws 1996, LB 1044, § 761; Laws 2007, LB296, § 654; Laws 2007, LB463, § 1243.

**71-6302 Asbestos project; business entity; license required; exceptions; training course.**

Except as otherwise provided in this section or section 71-6309, a business entity shall not engage in an asbestos project unless the business entity holds a license for that purpose. A business entity which (1) only performs asbestos projects which are less than two hundred sixty linear feet or which are less than one hundred sixty square feet and linear feet in any combination or (2) uses its own employees for an asbestos project for the purpose of renovating, maintaining, or repairing its own facilities shall not be required to hold a license. Business entities not required to hold a license shall provide a training course to inform the employees of the health and safety aspects of the asbestos project, including the applicable state standards. The training course shall meet the standards for such course as prescribed in section 71-6310.01 and the rules and regulations adopted and promulgated pursuant to such section. The training course shall be available for review and approval upon inspection by the department.

**Source:** Laws 1986, LB 1051, § 2; Laws 1988, LB 1073, § 2; Laws 1990, LB 923, § 2; Laws 2002, LB 1021, § 98.

**71-6303 Administration of act; rules and regulations; fees; department; powers and duties.**

(1) The department shall administer the Asbestos Control Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out the act. The department shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in the state standards so long as state standards are no less stringent than federal standards.

(3)(a) The department shall prescribe fees based upon the following schedule:

(i) For a business entity license or license renewal, not less than two thousand dollars or more than five thousand dollars;

(ii) For waiver on an emergency basis of a business entity license, not less than two thousand dollars or more than five thousand dollars;

(iii) For waiver of a license for a business entity not primarily engaged in asbestos projects, not less than two thousand dollars or more than five thousand dollars;

(iv) For approval of an initial training course, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(v) For approval of a review course or a four-hour course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(vi) For an onsite inspection of an asbestos project other than an initial inspection, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual asbestos project is in progress; and

(vii) For a project review of each asbestos project of a licensed business entity which is equal to or greater than two hundred sixty linear feet or any combination which is equal to or greater than one hundred sixty square feet and linear feet, including any initial onsite inspection, not less than two hundred dollars or more than five hundred dollars.

(b) Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of three hundred dollars for a license and one hundred dollars for approval of a training course shall be retained by the department.

(c) All fees shall be based on the costs of administering the Asbestos Control Act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensed business entity's procedures for performing asbestos projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for asbestos projects. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of asbestos occupations and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act.

**Source:** Laws 1986, LB 1051, § 3; Laws 1988, LB 1073, § 3; Laws 1991, LB 703, § 52; Laws 1995, LB 406, § 74; Laws 1996, LB 1044, § 762; Laws 2002, LB 1021, § 99; Laws 2003, LB 242, § 144; Laws 2007, LB296, § 655; Laws 2007, LB463, § 1244.

**71-6304 Business entity; license; qualifications.**

To qualify for a license, a business entity shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in asbestos projects;

(2) Ensure that each employee or agent of the business entity who will come into contact with asbestos or who will be present on an asbestos project is licensed as required by the Asbestos Control Act;

(3) Demonstrate to the satisfaction of the department that the business entity is capable of complying with all applicable requirements, procedures, and standards pertaining to the asbestos project;

(4) Have access to at least one approved asbestos disposal site for deposit of all asbestos waste that the business entity will generate during the term of the license; and

(5) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of asbestos occupations and the general public.

**Source:** Laws 1986, LB 1051, § 4; Laws 1988, LB 1073, § 4; Laws 2007, LB463, § 1245.

**71-6305 License; application; contents.**

(1) To apply for a license, a business entity shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

(a) The name, address, and nature of the business entity;

(b) A statement that all individuals who will engage in any asbestos project for the business entity will be licensed as required by the Asbestos Control Act;

(c) A description of the protective clothing and respirators that the business entity will use;

(d) The name and address of each asbestos disposal site that the business entity will use;

(e) A description of the site decontamination procedures that the business entity will use;

(f) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the business entity will use;

(g) A description of the procedures that the business entity will use for handling waste containing asbestos;

(h) A description of the air monitoring procedures that the business entity will use;

(i) A description of the procedures that the business entity will use in cleaning up the asbestos project;

(j) The signature of the chief executive officer of the business entity or his or her designee; and

(k) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of the general public and all classes of asbestos occupations.

**Source:** Laws 1986, LB 1051, § 5; Laws 1988, LB 1073, § 5; Laws 2007, LB463, § 1246.

**71-6306 License; term; renewal.**

(1) A license of a business entity shall expire on the first anniversary of its effective date unless it is renewed for one year as provided in this section.

(2) At least thirty days before the license expires, the department shall send to the licensee at his or her last-known address a renewal notice which states:

(a) The date on which the current license expires;

(b) The date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and

(c) The amount of the renewal fee.

(3) Before the license expires, the licensee may renew it for an additional one-year period if the licensee:

(a) Is otherwise entitled to be licensed;

(b) Submits a renewal application to the department in the form required by the department; and

(c) Pays the renewal fee prescribed by the department.

**Source:** Laws 1986, LB 1051, § 6; Laws 1988, LB 1073, § 6; Laws 2007, LB463, § 1247.

**71-6307 Licensee or business entity; records required; contents.**

The licensee or a business entity, whether excepted from the requirements for licensure by section 71-6302 or whether operating under a waiver, shall keep a record of each asbestos project and shall make the record available to the department at any reasonable time. All such records shall be kept for at least thirty years. Each record shall include:

(1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project;

(2) The location and description of the project and the amount of asbestos material that was removed;

(3) The starting and completion dates of each instance of asbestos encapsulation, demolition, dismantling, maintenance, or removal;

(4) A summary of the procedures that were used to comply with all applicable standards;

(5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and

(6) Such other information as the department may deem necessary for the efficient administration and enforcement of the Asbestos Control Act and for the protection of the health, safety, and welfare of all classes of asbestos occupations and the general public.

**Source:** Laws 1986, LB 1051, § 7; Laws 1988, LB 1073, § 7; Laws 2007, LB463, § 1248.

**71-6308 Repealed. Laws 1988, LB 1073, § 20.****71-6309 Waiver of requirements; when authorized.**

(1) In the event of an emergency in which, in the opinion of the department, there is created a situation of present and severe danger which poses an

immediate threat to the public health, safety, and welfare, the department may waive the requirement for licensure of an individual or business entity upon application and payment of the fee prescribed by the department. Such emergency waiver shall be limited to the time required to take protective measures.

(2) The department may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the department's satisfaction that the proposed alternative procedure provides equivalent protection to the health, safety, and welfare of all classes of asbestos occupations and the general public.

(3) If the business entity is not primarily engaged in asbestos projects, the department may waive the requirement for a license upon application and payment of the fee prescribed by the department if worker protection requirements are met or an alternative procedure is approved pursuant to subsection (2) of this section and the health, safety, and welfare of the general public is protected.

**Source:** Laws 1986, LB 1051, § 9; Laws 1988, LB 1073, § 8; Laws 2007, LB296, § 656; Laws 2007, LB463, § 1249.

**71-6309.01 Repealed. Laws 1995, LB 406, § 96.**

**71-6310 Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications.**

(1) An individual shall not be eligible to work on an asbestos project unless the individual holds the appropriate class of license issued by the department. Application for a license shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the act as provided in section 71-6314.

(2) The department shall issue the following classes of licenses: Worker; supervisor; inspector; management planner; project monitor; and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator, and (c) passed an examination approved or administered by the department with at least the minimum score prescribed by the department. An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

(3) As an alternative to the qualifications in subdivision (2)(a) of this section, an individual shall have completed a fully accredited United States Environmental Protection Agency Asbestos Hazard Emergency Response Act of 1986 training program or the individual shall be currently accredited by a United States Environmental Protection Agency fully accredited state asbestos model accreditation plan adopted pursuant to 40 C.F.R. 763. In addition to the alternative qualifications, the individual shall successfully complete a four-hour

course approved by the department on Nebraska law, rules, and regulations and shall pass an examination thereon which shall be approved and may be administered by the department.

(4) The department may issue a limited license to a project designer or management planner who does not intend to enter any management plan, project design, or asbestos project worksite. An applicant for a limited license under this subsection shall not be required to comply with the requirements of subdivision (2)(b) of this section. A holder of a limited license shall not enter any management plan, project design, or asbestos project worksite. The limitation shall be endorsed upon the license. Violation of the limitation shall be grounds for disciplinary action against the license pursuant to section 71-6314. An individual holding a limited certificate on December 1, 2008, shall be deemed to be holding a limited license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such limited certificate as a limited license in accordance with such acts until the limited certificate would have expired under its terms.

(5) The department shall approve instructors of training courses. To qualify for approval, an individual shall have (a) graduated from high school or obtained a general educational development certificate or equivalent document as determined by the department, (b) successfully completed an approved four-hour course on Nebraska law, rules, and regulations, and (c) at least one year of actual work experience in the asbestos industry.

**Source:** Laws 1986, LB 1051, § 10; Laws 1988, LB 352, § 144; Laws 1988, LB 1073, § 9; Laws 1995, LB 406, § 75; Laws 1997, LB 752, § 195; Laws 2007, LB463, § 1250.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-6310.01 Asbestos occupations; training courses; approval.**

(1) The department shall approve training courses for each classification of asbestos occupation. Applicants for course approval shall meet the requirements for each course and shall submit an application on forms provided by the department together with the prescribed fee. Approved course providers shall use only approved instructors to teach each training course. The department shall conduct onsite inspections of the training courses offered by course providers.

(2) In order to be approved by the department, an initial inspector training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, at least four hours of hands-on training, individual respirator-fit testing, and a written examination; background information on asbestos and potential health effects related to exposure to asbestos; functions, qualifications, and the role of inspectors; legal liabilities and defenses; understanding building systems; public, employee, and occupant relations; preinspection planning and review of previous inspection records and inspecting for friable and nonfriable asbestos-containing material and assessing the condition of asbestos-containing material; bulk sampling and documentation of asbestos; inspector respiratory protection and personal protective equipment; and record keeping and inspection report writing, regulatory review, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects

dealing with the course content. The passing score shall be determined by the department.

(3) In order to be approved by the department, an initial management planner training course shall meet the following requirements: A three-day inspector training course as outlined in subsection (2) of this section and a two-day management planner training course including lectures, demonstrations, and a written examination; course overview; evaluation and interpretation of survey results, hazard assessment, and legal implications; evaluation and selection of control options; role of other professionals; developing an operations and maintenance plan; and regulatory review, record keeping for the management planner, assembling and submitting the management plan, financing abatement actions, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(4) In order to be approved by the department, an initial project designer training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, and a written examination; background information on asbestos and potential health effects related to asbestos exposure; overview of abatement construction projects; safety system design specifications, employee personal protective equipment, and additional safety hazards; fiber aerodynamics and control, designing abatement solutions, final clearance process, and budgeting and cost estimation; writing abatement specifications and preparing abatement drawings; contract preparation and administration and legal liabilities and defenses; replacement of asbestos with asbestos-free substitutes; role of other consultants; occupied buildings; and relevant federal, state, and local regulatory requirements and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(5) In order to be approved by the department, an initial project monitor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least six hours of hands-on training, and a written examination; roles and responsibilities of the project monitor; characteristics of asbestos and asbestos-containing materials; federal and state asbestos regulation overview; understanding building construction and building systems; asbestos abatement contracts, specifications, and drawings; response actions and abatement practices; asbestos abatement equipment; personal protective equipment; air monitoring strategies; safety and health issues other than asbestos; conducting visual inspections; final clearance process; legal responsibilities and liabilities of project monitors; record keeping and report writing; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(6) In order to be approved by the department, an initial supervisor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; the physical characteristics of asbestos and asbestos-containing materials and potential health effects related to asbestos exposure; employee personal protective equip-



ment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements; respiratory protection programs, medical surveillance programs, and insurance and liability issues; record keeping for asbestos abatement projects and supervisory techniques for asbestos abatement activity; contract specifications; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(7) In order to be approved by the department, an initial worker training course shall meet the following requirements: A four-day training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; physical characteristics of asbestos, potential health effects related to asbestos exposure, employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements, procedures, and standards; establishment of respiratory protection programs; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(8) In order to be approved by the department, a course on Nebraska law, rules, and regulations required by subsection (3) of section 71-6310 shall consist of at least four hours of training on Nebraska law, rules, and regulations relating to asbestos. The written examination shall be approved and may be administered by the department. The passing score shall be determined by the department.

**Source:** Laws 1988, LB 1073, § 14; Laws 1995, LB 406, § 76; Laws 2007, LB463, § 1251.

**71-6310.02 Asbestos occupations; license; renewal; continuing competency requirements.**

(1) Any individual licensed in any of the asbestos occupations prescribed in section 71-6310, as a condition for license renewal, shall complete continuing competency activities as required by the department and shall be examined and approved by a physician as prescribed for initial applicants in section 71-6310. The licensee shall submit evidence as required by the department of satisfaction of the requirements of this section.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

**Source:** Laws 1988, LB 1073, § 13; Laws 2002, LB 1021, § 100; Laws 2007, LB463, § 1252.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-6310.03 Project designer or project monitor; duties.**

If a project designer or a project monitor is selected by the structure's owner or operator for an asbestos project, the project designer and project monitor shall be responsible for the following:

(1) Project designers shall prepare plans and specifications for business entities conducting asbestos projects. The plans and specifications shall be consistent with the criteria, requirements, and best interests of the structure's owner or operator and the requirements of the Asbestos Control Act. The project designer shall represent the owner or operator and ensure that these objectives are achieved by the business entity conducting the project throughout the project;

(2) Prior to preparing plans and specifications for any renovation project, a project designer shall ensure that any equipment items and any structural items of a structure affected by the renovation were inspected and assessed by a licensed inspector. Prior to preparing plans and specifications for any demolition, a project designer shall ensure that the entire structure was inspected and assessed by a licensed inspector. No dismantling or salvage operation shall begin before the inspection and assessment is completed;

(3) If a project designer or project monitor is selected by the owner or operator of the structure on or in which the asbestos project is conducted, he or she shall be independent of the business entity selected to perform the asbestos project. A private or public business entity which uses its own trained and licensed employees to perform asbestos projects may also use its own employees who are trained and licensed as project designers or project monitors to design and monitor projects conducted on or in its own structures; and

(4) If a project designer or project monitor is selected by the structure's owner or operator for an asbestos project, the project designer or project monitor shall oversee the activities of a business entity conducting an asbestos project to ensure that the requirements of the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to the act are met. Prior to allowing an asbestos project site to be returned to normal occupancy or function, a project designer or project monitor shall ensure that all waste, debris, and residue have been removed from the site in compliance with the act and the rules and regulations adopted and promulgated pursuant to the act.

**Source:** Laws 1995, LB 406, § 78; Laws 2007, LB463, § 1253.

**71-6310.04 Fees.**

The department shall establish and collect fees for issuance and renewal of licenses as provided in sections 38-151 to 38-157 for individuals licensed under section 71-6310.

**Source:** Laws 2007, LB463, § 1254.

**71-6311 Governmental body; contract with nonlicensee prohibited.**

No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any asbestos project which is two hundred sixty or more linear feet or one hundred sixty or more square feet and linear feet in any combination from a business entity which does not hold a license from the department at the time the bid is submitted.

**Source:** Laws 1986, LB 1051, § 11; Laws 1995, LB 406, § 77.

**71-6312 Violations; penalties.**

(1) An individual or business entity which engages in an asbestos project without a valid license, except as otherwise provided in the Asbestos Control Act, shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in an asbestos occupation without a valid license, except as otherwise provided in the act, shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any business entity which knowingly engages in an asbestos project but which uses employees who do not hold a license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) The civil penalties prescribed in subsections (1), (2), and (3) of this section shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(5) An individual or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project or an asbestos occupation without a valid license or using employees who do not hold a license, except as otherwise provided in the Asbestos Control Act:

- (a) For a first offense, shall be guilty of a Class I misdemeanor; and
- (b) For a second or subsequent offense, shall be guilty of a Class IV felony.

**Source:** Laws 1986, LB 1051, § 12; Laws 1988, LB 1073, § 10; Laws 1990, LB 923, § 3; Laws 2007, LB463, § 1255.

**71-6313 Violations; action to enjoin.**

The Attorney General may institute an action in the name of the state for an injunction or other process against any business entity or individual to restrain or prevent any violation of the Asbestos Control Act or of any rules and regulations adopted and promulgated pursuant to such act.

**Source:** Laws 1986, LB 1051, § 13; Laws 1988, LB 1073, § 11; Laws 2007, LB463, § 1256.

**71-6314 Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement.**

(1) When the department determines that a business entity that holds a license has violated the Asbestos Control Act or any rule and regulation adopted and promulgated pursuant to the act, the department may, rather than initially instituting disciplinary proceedings pursuant to subsection (2) of this section, within seven working days after a finding of a violation is made, issue a citation to the licensee. The citation shall be served upon the licensee personally or by certified mail. Each citation shall specifically describe the nature of the viola-

tion and identify the statute, rule, or regulation violated. When a citation is served upon the licensee, the licensee shall have seven working days to remedy the violation. If such violation has not been remedied at the end of such time, the department may take such other action as is deemed appropriate pursuant to the Asbestos Control Act and the Administrative Procedure Act.

(2) Independent of the provisions of subsection (1) of this section, a license or approval issued pursuant to the Asbestos Control Act may be denied, refused renewal, suspended, or revoked when the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license or approval, fails at any time to meet the qualifications for a license or approval, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for asbestos projects, or employs or permits an unlicensed individual to work in an asbestos occupation. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Asbestos Control Act or the rules and regulations adopted and promulgated under the acts.

(3) In addition to the disciplinary actions provided for in subsection (2) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars for each offense committed by any business entity licensed under the Asbestos Control Act or not less than one hundred dollars nor more than five thousand dollars for each offense committed by an individual licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(4) Whenever the department determines to deny, refuse to renew, suspend, or revoke a license or approval or assess a civil penalty, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(5) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under such act.

(6) Any civil penalty assessed and unpaid under the Asbestos Control Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty

days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1986, LB 1051, § 14; Laws 1988, LB 352, § 145; Laws 1988, LB 1073, § 12; Laws 1995, LB 406, § 79; Laws 2007, LB463, § 1257.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

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

**71-6315 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.**

(1) All rules and regulations adopted prior to December 1, 2008, under the Asbestos Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Asbestos Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Asbestos Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

**Source:** Laws 2007, LB463, § 1258.

**71-6316 Act; districts exempt.**

The Asbestos Control Act shall not apply to a district as defined in section 70-601 or a district subject to sections 14-2101 to 14-2157.

**Source:** Laws 1988, LB 1073, § 17; Laws 1992, LB 746, § 74.

**71-6317 Asbestos Control Act; act, how cited.**

Sections 71-6301 to 71-6317 shall be known and may be cited as the Asbestos Control Act.

**Source:** Laws 1988, LB 1073, § 18; Laws 1995, LB 406, § 80; Laws 2007, LB463, § 1259.

**Cross References**

**Asbestos removal, credentialing provisions**, see sections 38-1,119 to 38-1,123.

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT

**71-6318 Residential Lead-Based Paint Professions Practice Act; act, how cited.**

Sections 71-6318 to 71-6331.01 shall be known and may be cited as the Residential Lead-Based Paint Professions Practice Act.

**Source:** Laws 1994, LB 1210, § 166; Laws 1995, LB 147, § 1; Laws 1999, LB 863, § 1; Laws 2007, LB463, § 1260.

**Cross References**

**Lead-based paint removal, credentialing provisions**, see sections 38-1,119 to 38-1,123.

**71-6318.01 Act; purpose and applicability.**

(1) The Residential Lead-Based Paint Professions Practice Act contains procedures and requirements for the accreditation of training programs, procedures and requirements for the licensure of individuals and firms engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities. The act also requires that, except as otherwise provided in the act, all lead-based paint activities be performed by licensed individuals and firms.

(2) The act applies to all individuals and firms who are engaged in lead-based paint activities, except persons who perform lead-based paint activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed or unless a child residing in the building has been identified as having an elevated blood-lead level.

(3) While the act establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in the act requires that the owner or occupant undertake any particular lead-based paint activity.

**Source:** Laws 1999, LB 863, § 2; Laws 2007, LB463, § 1261.

**71-6319 Repealed. Laws 1999, LB 863, § 57.****71-6319.01 Definitions, where found.**

For purposes of the Residential Lead-Based Paint Professions Practice Act, the definitions found in sections 71-6319.02 to 71-6319.40 apply.

**Source:** Laws 1999, LB 863, § 3; Laws 2007, LB463, § 1262.

**71-6319.02 Abatement or abatement project, defined.**

Abatement or abatement project means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(3)(a) Projects for which there is a written contract or other documentation which provides that a firm or an individual will be conducting activities in or to a residential dwelling or child-occupied facility that (i) will result in the permanent elimination of lead-based paint hazards or (ii) are designed to permanently eliminate lead-based paint hazards and are described in subdivision (1) or (2) of this section;

(b) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals licensed in accordance with the Residential Lead-Based Paint Professions Practice Act unless such projects are excluded from the definition of abatement or abatement project under this section;

(c) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals who or which, through company

name or promotional literature, hold themselves out to be in the business of performing lead-based paint activities unless such projects are excluded from the definition of abatement or abatement project under this section; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

Abatement does not include renovation, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards but instead are designed to repair, restore, or remodel a structure or dwelling even if such activities may incidentally result in a reduction or elimination of lead-based paint hazards. Abatement does not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily but not permanently reduce lead-based paint hazards.

**Source:** Laws 1999, LB 863, § 4; Laws 2007, LB463, § 1263.

**71-6319.03 Accredited training program, defined.**

Accredited training program means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

**Source:** Laws 1999, LB 863, § 5.

**71-6319.04 Licensed abatement worker, defined.**

Licensed abatement worker means an individual who has been trained by an accredited training program and licensed by the department to perform abatement projects.

**Source:** Laws 1999, LB 863, § 6; Laws 2007, LB463, § 1264.

**71-6319.05 Licensed firm, defined.**

Licensed firm means a firm to which the department has issued a license.

**Source:** Laws 1999, LB 863, § 7; Laws 2007, LB463, § 1265.

**71-6319.06 Licensed inspector, defined.**

Licensed inspector means an individual who has been trained by an accredited training program and licensed by the department to conduct inspections and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

**Source:** Laws 1999, LB 863, § 8; Laws 2007, LB463, § 1266.

**71-6319.07 Licensed project designer, defined.**

Licensed project designer means an individual who has been trained by an accredited training program and licensed by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

**Source:** Laws 1999, LB 863, § 9; Laws 2007, LB463, § 1267.

**71-6319.08 Licensed risk assessor, defined.**

Licensed risk assessor means an individual who has been trained by an accredited training program and licensed by the department to conduct risk

assessments and to sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

**Source:** Laws 1999, LB 863, § 10; Laws 2007, LB463, § 1268.

**71-6319.09 Licensed supervisor, defined.**

Licensed supervisor means an individual who has been trained by an accredited training program and licensed by the department to supervise and conduct abatement projects and to prepare occupant protection plans and abatement reports.

**Source:** Laws 1999, LB 863, § 11; Laws 2007, LB463, § 1269.

**71-6319.10 Licensed visual lead-hazard advisor, defined.**

Licensed visual lead-hazard advisor means an individual who has been trained by an accredited training program and licensed by the department to conduct a visual lead-hazard screen.

**Source:** Laws 1999, LB 863, § 12; Laws 2007, LB463, § 1270.

**71-6319.11 Child-occupied facility, defined.**

Child-occupied facility means a building or portion of a building, constructed prior to 1978, visited regularly by the same child six years of age or under, on at least two different days within any seven-day period running from Sunday through Saturday, if each daily visit lasts at least three hours, the combined weekly visits last at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facility may include, but is not limited to, a day-care center, a preschool, or a kindergarten classroom.

**Source:** Laws 1999, LB 863, § 13.

**71-6319.12 Common area, defined.**

Common area means a portion of a building that is generally accessible to all occupants and may include, but is not limited to, a hallway, stairway, laundry or recreational room, playground, community center, garage, or boundary fence.

**Source:** Laws 1999, LB 863, § 14.

**71-6319.13 Component or building component, defined.**

Component or building component means a specific design or structural element or a fixture of a building, residential dwelling, or child-occupied facility that is distinguished from others by form, function, and location and may include, but is not limited to, (1) interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim including sashes, window heads, jambs, or sills or stools and troughs, built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners and (2) exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascia, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balus-



trades, window sills or stools and troughs, casings, sashes, and wells, and air conditioners.

**Source:** Laws 1999, LB 863, § 15.

**71-6319.14 Containment, defined.**

Containment means a process to protect workers and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement project.

**Source:** Laws 1999, LB 863, § 16.

**71-6319.15 Department, defined.**

Department means the Department of Health and Human Services.

**Source:** Laws 1999, LB 863, § 17; Laws 2007, LB296, § 657.

**71-6319.16 Deteriorated paint, defined.**

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

**Source:** Laws 1999, LB 863, § 18.

**71-6319.17 Repealed. Laws 2007, LB 296, § 815.**

**71-6319.18 Elevated blood-lead level, defined.**

Elevated blood-lead level means a confirmed concentration of lead in whole blood of twenty micrograms of lead per deciliter of whole blood for a single venous test or of fifteen to nineteen micrograms of lead per deciliter of whole blood in two consecutive tests taken three to four months apart.

**Source:** Laws 1999, LB 863, § 20.

**71-6319.19 Encapsulant, defined.**

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

**Source:** Laws 1999, LB 863, § 21.

**71-6319.20 Encapsulation, defined.**

Encapsulation means the application of an encapsulant.

**Source:** Laws 1999, LB 863, § 22.

**71-6319.21 Enclosure, defined.**

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

**Source:** Laws 1999, LB 863, § 23.

**71-6319.22 Firm, defined.**

Firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that conducts lead-based paint abatement or abatement projects.

**Source:** Laws 1999, LB 863, § 24.

**71-6319.23 Guest instructor, defined.**

Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

**Source:** Laws 1999, LB 863, § 25.

**71-6319.24 Inspection, defined.**

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**Source:** Laws 1999, LB 863, § 26.

**71-6319.25 Interim controls, defined.**

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

**Source:** Laws 1999, LB 863, § 27.

**71-6319.26 Lead-based paint, defined.**

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than five-tenths of one percent by weight in a residential dwelling or child-occupied facility.

**Source:** Laws 1999, LB 863, § 28.

**71-6319.27 Lead-based paint activities, defined.**

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

**Source:** Laws 1999, LB 863, § 29.

**71-6319.28 Lead-based paint hazard, defined.**

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated paint or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the department.

**Source:** Laws 1999, LB 863, § 30; Laws 2007, LB296, § 658.

**71-6319.29 Lead-based paint profession, defined.**

Lead-based paint profession means one of the specific types or categories of lead-based paint activities identified in the Residential Lead-Based Paint Professions Practice Act for which individuals may receive training from an accredited training program and become licensed by the department.

**Source:** Laws 1999, LB 863, § 31; Laws 2007, LB463, § 1271.

**71-6319.30 Lead-contaminated dust, defined.**

Lead-contaminated dust means surface dust in a residential dwelling or child-occupied facility that contains an area or mass concentration of lead at or in excess of levels identified by the department.

**Source:** Laws 1999, LB 863, § 32; Laws 2007, LB296, § 659.

**71-6319.31 Lead-contaminated soil, defined.**

Lead-contaminated soil means bare soil on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels identified by the department.

**Source:** Laws 1999, LB 863, § 33; Laws 2007, LB296, § 660.

**71-6319.32 Person, defined.**

Person means any natural or judicial person, including any individual, corporation, partnership, or association, any state, or political subdivision thereof, any interstate body, and any department, agency, or instrumentality of the United States Government.

**Source:** Laws 1999, LB 863, § 34.

**71-6319.33 Principal instructor, defined.**

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

**Source:** Laws 1999, LB 863, § 35.

**71-6319.34 Reduction, defined.**

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

**Source:** Laws 1999, LB 863, § 36.

**71-6319.35 Residential dwelling, defined.**

Residential dwelling means a detached single-family dwelling unit, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit which is used or occupied or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

**Source:** Laws 1999, LB 863, § 37.

**71-6319.36 Risk assessment, defined.**

Risk assessment means an onsite investigation to determine the existence, nature, severity, and location of lead-based paint hazards and the provision of a

report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

**Source:** Laws 1999, LB 863, § 38.

**71-6319.37 Target housing, defined.**

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities unless one or more children six years of age or under resides or is expected to reside in such housing for the elderly or persons with disabilities or any zero-bedroom dwelling.

**Source:** Laws 1999, LB 863, § 39.

**71-6319.38 Training curriculum, defined.**

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular lead-based paint profession designed to provide specialized knowledge and skills.

**Source:** Laws 1999, LB 863, § 40.

**71-6319.39 Training program manager, defined.**

Training program manager means the individual responsible for administering an accredited training program and monitoring the performance of principal instructors and guest instructors.

**Source:** Laws 1999, LB 863, § 41.

**71-6319.40 Visual lead-hazard screen, defined.**

Visual lead-hazard screen means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility. Visual lead-hazard screen includes a written report explaining the results and limitations of the assessment. The written report will be provided to the person requesting the inspection, the residents of the dwelling, and the owner of the dwelling or child-occupied facility. A licensed visual lead-hazard advisor shall retain a copy of the report in his or her files for three years.

**Source:** Laws 1999, LB 863, § 42; Laws 2007, LB463, § 1272.

**71-6320 Lead abatement project; firm; license required.**

Except as otherwise provided in the Residential Lead-Based Paint Professions Practice Act, a firm shall not engage in an abatement project unless the firm holds a license for that purpose.

**Source:** Laws 1994, LB 1210, § 168; Laws 1999, LB 863, § 43; Laws 2007, LB463, § 1273.

**71-6321 Administration of act; rules and regulations; department; powers and duties.**

(1) The department shall administer the Residential Lead-Based Paint Professions Practice Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out such act. The department shall adopt state standards govern-

ing abatement projects and may adopt or incorporate part or all of any federal standards in such state standards so long as state standards are no less stringent than federal standards.

(3) The department shall prescribe fees based upon the following schedule:

(a) For an annual firm license or license renewal, not less than two hundred dollars or more than five hundred dollars;

(b) For accreditation of a training program, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(c) For accreditation of a review course or a course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(d) For onsite inspections other than initial inspections, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual abatement project is in progress; and

(e) For a project review of each abatement project of a licensed firm, not less than two hundred dollars or more than five hundred dollars.

Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of one hundred dollars for a firm license and for accreditation of a training program shall be retained by the department.

All fees shall be based on the costs of administering the act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an abatement project the department shall conduct an onsite inspection of each licensed firm's procedures for performing abatement projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act if such agencies have the appropriate licensure or accreditation as described in the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for abatement projects, for the licensure of lead-based paint professions, for the accreditation of training programs, for the accreditation of training program providers, for the dissemination of prerenovation information to homeowners and occupants, for the facilitation of compliance with federal lead-based paint hazard control grant programs, and for the implementation of lead-based paint compliance monitoring and enforcement activities. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of lead-based paint professions and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of adminis-

tering the act. Any funds applied for, received, or used by the department or any political subdivision from the federal government or any public entity may be used only to abate lead-based paint hazards and for the administration of lead-based paint programs which address health and environmental hazards caused by lead-based paint.

**Source:** Laws 1994, LB 1210, § 169; Laws 1996, LB 1044, § 764; Laws 1999, LB 863, § 44; Laws 2001, LB 668, § 3; Laws 2002, LB 1021, § 101; Laws 2003, LB 242, § 145; Laws 2007, LB296, § 661; Laws 2007, LB463, § 1274.

**71-6322 Firm; license; qualifications.**

To qualify for a license, a firm shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in abatement projects;

(2) Ensure that each employee or agent of the firm who will participate in an abatement project is licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(3) Demonstrate to the satisfaction of the department that the firm is capable of complying with all applicable requirements, procedures, and standards pertaining to abatement projects; and

(4) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of lead-based paint professions and the general public.

**Source:** Laws 1994, LB 1210, § 170; Laws 1999, LB 863, § 45; Laws 2007, LB463, § 1275.

**71-6323 License; application; contents; current certificate holder; how treated.**

(1) To apply for a license, a firm shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

(a) The name, address, and nature of the firm;

(b) A statement that all individuals who will engage in any abatement project for the firm will be licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(c) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the firm will use;

(d) A description of the procedures that the firm will use for handling lead-containing waste;

(e) A description of the procedures that the firm will use in cleaning up the abatement project;

(f) The signature of the chief executive officer of the firm or his or her designee; and

(g) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of all classes of lead-based paint professions and the general public.

(3) A firm holding a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

**Source:** Laws 1994, LB 1210, § 171; Laws 1999, LB 863, § 46; Laws 2007, LB463, § 1276.

Cross References

Uniform Credentialing Act, see section 38-101.

**71-6324 Repealed. Laws 1999, LB 863, § 57.**

**71-6325 Repealed. Laws 1999, LB 863, § 57.**

**71-6326 Individuals; license required; qualifications; term; renewal; applications; current certificate holder; how treated.**

(1) An individual shall not be eligible to work on an abatement project unless the individual holds a license issued by the department.

(2) The department shall issue the following classes of licenses: Worker, supervisor, inspector, risk assessor, visual lead-hazard advisor, elevated blood-lead level inspector, and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) passed an examination approved or administered by the department with at least the minimum score prescribed by the department, and (c) for the classes of worker and supervisor, been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator.

(3) An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

**Source:** Laws 1994, LB 1210, § 174; Laws 1997, LB 752, § 196; Laws 1999, LB 863, § 47; Laws 2007, LB463, § 1277.

Cross References

Uniform Credentialing Act, see section 38-101.

**71-6327 Lead-based paint professions; license; application; disciplinary actions; fees; continuing competency requirements.**

(1) An applicant for a license in any of the lead-based paint professions prescribed in the Residential Lead-Based Paint Professions Practice Act shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the Uniform Credentialing Act as provided in section 71-6331. The department shall estab-

lish and collect license and renewal fees as provided in sections 38-151 to 38-157.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

**Source:** Laws 1994, LB 1210, § 175; Laws 1999, LB 863, § 48; Laws 2002, LB 1021, § 102; Laws 2007, LB463, § 1278.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-6328 Governmental body; acceptance of bid; limitation.**

No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any abatement project from a firm which does not hold a license from the department at the time the bid is submitted.

**Source:** Laws 1994, LB 1210, § 176; Laws 1999, LB 863, § 49; Laws 2007, LB463, § 1279.

**71-6328.01 Reciprocity.**

Any individual or firm who or which has been issued a license, a certificate, or accreditation for training in another state which (1) has a licensure, certification, or accreditation program approved by the federal Environmental Protection Agency, (2) has licensure, accreditation, certification, education, and experience requirements substantially equal to or greater than those adopted by this state, and (3) grants equal licensure, certification, and accreditation privileges to individuals and firms licensed or accredited and residing in this state may be issued an equivalent license or accreditation in Nebraska upon terms and conditions determined by the department. The terms and conditions may reduce the time period the license is valid and the fee requirements.

**Source:** Laws 1999, LB 863, § 53; Laws 2003, LB 242, § 146; Laws 2007, LB463, § 1280.

**71-6328.02 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.**

(1) All rules and regulations adopted prior to December 1, 2008, under the Residential Lead-Based Paint Professions Certification Act shall continue to be effective under the Residential Lead-Based Paint Professions Practice Act to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Residential Lead-Based Paint Professions Certification Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, in the Residential Lead-Based Paint Professions Practice Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Residential



Lead-Based Paint Professions Certification Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

**Source:** Laws 2007, LB463, § 1285.

**71-6329 Violations; penalties.**

(1) A firm which engages in an abatement project without a valid license as provided in the Residential Lead-Based Paint Professions Practice Act shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in a lead-based paint profession without a valid license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any firm which knowingly engages in an abatement project but which uses employees who do not hold licenses shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) Any firm conducting an accredited training program which knowingly engages in issuing fraudulent licenses or fails to conduct its training program in accordance with its accreditation shall, in addition to having its accreditation revoked, pay a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars.

(5) The civil penalties prescribed in subsections (1), (2), (3), and (4) of this section shall be assessed in a civil action brought for such purpose by the Attorney General or the county attorney in the district court of the county in which the violation occurred.

(6) An individual or firm which has been assessed a civil penalty under this section and subsequently engages in an abatement project or a lead-based paint profession without a valid license or using employees who do not hold licenses, conducts training programs without being accredited by the department, or issues fraudulent licenses, except as otherwise provided in the act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

**Source:** Laws 1994, LB 1210, § 177; Laws 1999, LB 863, § 50; Laws 2007, LB463, § 1281.

**71-6330 Violations; action to enjoin.**

Upon the request of the department, the Attorney General or appropriate county attorney shall institute without delay an action in the name of the state for proceedings appropriate against any individual or firm to restrain or prevent any violation of the Residential Lead-Based Paint Professions Practice

Act or of any rules and regulations adopted and promulgated pursuant to the act.

**Source:** Laws 1994, LB 1210, § 178; Laws 1999, LB 863, § 51; Laws 2007, LB463, § 1282.

**71-6331 Violations; disciplinary actions; civil penalty; procedure; appeal; lien; enforcement.**

(1) An application or a license under the Residential Lead-Based Paint Professions Practice Act may be denied, refused renewal, suspended, or revoked if the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license, fails at any time to meet the qualifications for a license, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for abatement projects, or employs or permits an unlicensed individual to work in a lead-based paint profession. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Residential Lead-Based Paint Professions Practice Act or the rules and regulations adopted and promulgated under the acts.

(2) In addition to the disciplinary actions provided for in subsection (1) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than three thousand dollars for each offense committed by any firm licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(3) Whenever the department determines to deny, refuse to renew, suspend, or revoke a firm license or assess a civil penalty on a firm, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(4) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act.

(5) Any civil penalty assessed and unpaid under the Residential Lead-Based Paint Professions Practice Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil

penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1994, LB 1210, § 179; Laws 1999, LB 863, § 52; Laws 2007, LB463, § 1283.

**Cross References**

**Administrative Procedure Act**, see section 84-920.  
**Uniform Credentialing Act**, see section 38-101.

**71-6331.01 Environmental audits; applicability.**

Sections 25-21,254 to 25-21,264 do not apply to the Residential Lead-Based Paint Professions Practice Act.

**Source:** Laws 1999, LB 863, § 54; Laws 2007, LB463, § 1284.

**71-6332 Repealed. Laws 1999, LB 863, § 57.**

**71-6333 Repealed. Laws 1999, LB 863, § 57.**

**ARTICLE 64**

**BUILDING CONSTRUCTION**

**Section**

- 71-6401. Act, how cited.
- 71-6402. Purpose of act.
- 71-6403. State building code; adopted; amendments.
- 71-6404. State building code; applicability.
- 71-6405. State building code; compliance required.
- 71-6406. County, city, or village; building code; adopt; amend; enforce; copy; fees.
- 71-6407. Construction of act.

**71-6401 Act, how cited.**

Sections 71-6401 to 71-6407 shall be known and may be cited as the Building Construction Act.

**Source:** Laws 1987, LB 227, § 1.

**71-6402 Purpose of act.**

It is the purpose of the Building Construction Act to:

- (1) Adopt a state building code to govern the construction, reconstruction, alteration, and repair of buildings and other structures within Nebraska;
- (2) Provide state standards to safeguard life, health, property, and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, and maintenance of buildings and structures within this state; and
- (3) Provide for the use of modern and innovative methods, devices, materials, and techniques in the design and construction of buildings and other structures.

**Source:** Laws 1987, LB 227, § 2.

**71-6403 State building code; adopted; amendments.**

(1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), chapter 13 of the 2009 edition, and all but such chapter of the 2012 edition, published by the International Code Council, except that (i) section 305.2.3 applies to a facility having twelve or fewer children and (ii) section 310.5.1 applies to a care facility for twelve or fewer persons;

(b) The International Residential Code (IRC), chapter 11 of the 2009 edition, and all but such chapter of the 2012 edition except section R313, published by the International Code Council; and

(c) The International Existing Building Code, 2012 edition, published by the International Code Council.

(2) The codes adopted by reference in subsection (1) of this section shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

**Source:** Laws 1987, LB 227, § 3; Laws 1993, LB 319, § 1; Laws 1996, LB 1304, § 4; Laws 2003, LB 643, § 1; Laws 2010, LB799, § 1; Laws 2011, LB546, § 1; Laws 2015, LB540, § 1; Laws 2017, LB590, § 1.

**71-6404 State building code; applicability.**

(1) For purposes of the Building Construction Act, component means a portion of the state building code adopted by reference pursuant to section 71-6403.

(2) The state building code shall be the building and construction standard within the state and shall be applicable:

(a) To all buildings and structures owned by the state or any state agency; and

(b) In each county, city, or village which elects to adopt the state building code or any component or combination of components of the state building code.

**Source:** Laws 1987, LB 227, § 4; Laws 1993, LB 319, § 2; Laws 2010, LB799, § 2; Laws 2016, LB704, § 213.

**71-6405 State building code; compliance required.**

(1) All state agencies, including all state constitutional offices, state administrative departments, and state boards and commissions, the University of Nebraska, and the Nebraska state colleges, shall comply with the state building code.

(2) No state agency may adopt, promulgate, or enforce any rule or regulation in conflict with the state building code unless otherwise specifically authorized by statute to (a) adopt, promulgate, or enforce any rule or regulation in conflict with the state building code or (b) adopt or enforce a building or construction code other than the state building code.

(3) Nothing in the Building Construction Act shall authorize any state agency to apply such act to manufactured homes or recreational vehicles regulated by the Uniform Standard Code for Manufactured Homes and Recreational Vehi-

cles or to modular housing units regulated by the Nebraska Uniform Standards for Modular Housing Units Act.

**Source:** Laws 1987, LB 227, § 5; Laws 1993, LB 319, § 3; Laws 1996, LB 1304, § 5; Laws 2003, LB 643, § 2; Laws 2010, LB799, § 3; Laws 2011, LB546, § 2; Laws 2012, LB1001, § 1; Laws 2017, LB590, § 2.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.  
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

**71-6406 County, city, or village; building code; adopt; amend; enforce; copy; fees.**

(1) Any county, city, or village may enact, administer, or enforce a local building or construction code if or as long as such county, city, or village:

(a) Adopts the state building code; or

(b) Adopts a building or construction code that conforms generally with the state building code.

(2) A building or construction code shall be deemed to conform generally with the state building code if it:

(a) Adopts a special or differing building standard by amending, modifying, or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, establish best building or construction practices within the county, city, or village, or address special local conditions within the county, city, or village;

(b) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code;

(c) Adopts section 305 of the 2012 edition of the International Building Code without the exceptions described in subdivision (1)(a) of section 71-6403, chapter 13 of the 2012 edition of the International Building Code, chapter 11 of the 2012 edition of the International Residential Code, or section R313 of the 2012 edition of the International Residential Code;

(d) Adopts a plumbing code, an electrical code, a fire prevention code, or any other standard code as authorized under section 14-419, 15-905, 18-132, or 23-172; or

(e) Adopts a lighting and thermal efficiency ordinance, resolution, code, or standard as authorized under section 81-1618.

(3) A local building or construction code which includes a prior edition of any component or combination of components of the state building code shall not be deemed to conform generally with the state building code.

(4) A county, city, or village shall not adopt or enforce a local building or construction code other than as provided by this section.

(5) A county, city, or village which adopts or enforces a local building or construction code under this section shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recently enacted state building code or a code that conforms generally with the state building code is adopted by the county, city, or village within two years after an update to the state building code.

(6) A county, city, or village may adopt amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code.

(7) A county, city, or village which adopts one or more standard codes as part of its local building or construction code under this section shall keep at least one copy of each adopted code, or portion thereof, for use and examination by the public in the office of the clerk of the county, city, or village prior to the adoption of the code and as long as such code is in effect.

(8) Notwithstanding the provisions of the Building Construction Act, a public building of any political subdivision shall be built in accordance with the applicable local building or construction code. Fees, if any, for services which monitor a builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the county, city, or village doing the monitoring.

**Source:** Laws 1987, LB 227, § 6; Laws 1993, LB 319, § 4; Laws 2010, LB799, § 4; Laws 2011, LB546, § 3; Laws 2015, LB540, § 2; Laws 2016, LB704, § 214; Laws 2017, LB590, § 3.

#### **71-6407 Construction of act.**

Nothing in the Building Construction Act shall be construed to authorize any state agency or political subdivision to regulate the construction of farm buildings or other buildings or structures when such regulation is otherwise prohibited by law. Nothing in the act shall be construed to authorize any state agency or political subdivision to have any authority either to establish or to continue in effect, with respect to any manufactured home built pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, any standard regarding construction or safety which is not identical to standards promulgated by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, and the regulations promulgated by the United States Department of Housing and Urban Development under the federal law when there is in effect a standard of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, or the regulations applicable to the same aspect of performance of such manufactured home.

**Source:** Laws 1987, LB 227, § 7; Laws 1994, LB 511, § 7.

### **ARTICLE 65**

#### **IN-HOME PERSONAL SERVICES**

##### Section

- 71-6501. Terms, defined.
- 71-6502. In-home personal services worker; qualifications.
- 71-6503. In-home personal services agency; duties.
- 71-6504. Sections; applicability.

#### **71-6501 Terms, defined.**

For purposes of sections 71-6501 to 71-6504:

- (1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 71-6502 and provides in-home personal services.

**Source:** Laws 2007, LB236, § 39.

**71-6502 In-home personal services worker; qualifications.**

An in-home personal services worker:

(1) Shall be at least eighteen years of age;

(2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which crime is rationally related to the person's fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central registry created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

**Source:** Laws 2007, LB236, § 40; Laws 2014, LB853, § 49.

## Cross References

**Adult Protective Services Act**, see section 28-348.

**Medication Aide Act**, see section 71-6718.

**71-6503 In-home personal services agency; duties.**

An in-home personal services agency shall employ or contract with only persons who meet the requirements of section 71-6502 to provide in-home personal services. The in-home personal services agency shall perform or cause to be performed a criminal history record information check on each in-home personal services worker and a check of his or her driving record as maintained by the Department of Motor Vehicles or by any other state which has issued an operator's license to the in-home personal services worker, when driving is a service provided by the in-home personal services worker, and shall maintain documentation of such checks in its records for inspection at its place of business.

**Source:** Laws 2007, LB236, § 41.

**71-6504 Sections; applicability.**

Sections 71-6501 to 71-6503 do not apply to the performance of health maintenance activities by designated care aides pursuant to section 38-2219 or to persons who provide personal assistant services, respite care or habilitation services, or aged and disabled services.

**Source:** Laws 2007, LB236, § 42; Laws 2007, LB247, § 85.

**ARTICLE 66****HOME HEALTH AIDE SERVICES**

## Cross References

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

## Section

71-6601.	Legislative intent.
71-6602.	Terms, defined.
71-6603.	Home health aide; requirements.
71-6604.	Repealed. Laws 1991, LB 703, § 83.
71-6605.	Home health aides; permitted acts.
71-6606.	Home health agencies; employ qualified aides.
71-6607.	Home health agency; provide supervision; care plan.
71-6608.	Home health aide; demonstrate competency; when required.
71-6608.01.	Home health aide training course; standards; supervised training; documentation required.
71-6608.02.	Home health aide competency evaluation; requirements.
71-6609.	Repealed. Laws 2000, LB 819, § 162.
71-6610.	Repealed. Laws 1991, LB 703, § 83.
71-6611.	Repealed. Laws 1991, LB 703, § 83.
71-6612.	Home health agency; verify competency.
71-6613.	Repealed. Laws 1991, LB 703, § 83.
71-6614.	Repealed. Laws 2000, LB 819, § 162.
71-6615.	Hospice program; volunteers exempt.

**71-6601 Legislative intent.**

It is the intent of the Legislature that quality health care be provided to all citizens of the state who receive home health aide services through a licensed home health agency. A method of accomplishing quality health care is to ensure adequate training of unlicensed personnel who provide home health aide



services by establishing minimum standards for training, evaluation, and supervision. The purpose of sections 71-6601 to 71-6615 is to establish requirements for the provision of home health aide services.

**Source:** Laws 1988, LB 1100, § 116; Laws 1991, LB 703, § 53.

**71-6602 Terms, defined.**

As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

- (1) Activities of daily living means assistance with ambulation, toileting, feeding, and similar activities;
- (2) Basic therapeutic care means basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment;
- (3) Department means the Department of Health and Human Services;
- (4) Home health agency means a home health agency as defined in section 71-417;
- (5) Home health aide means a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;
- (6) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;
- (7) Supervised practical training means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and
- (8) Vital signs means temperature, pulse, respiration, and blood pressure.

**Source:** Laws 1988, LB 1100, § 117; Laws 1991, LB 703, § 54; Laws 1996, LB 1044, § 765; Laws 1998, LB 1354, § 41; Laws 2000, LB 819, § 136; Laws 2007, LB296, § 662.

**71-6603 Home health aide; requirements.**

On and after September 6, 1991, no person shall act as a home health aide unless such person:

- (1) Is at least eighteen years of age;
- (2) Is of good moral character;
- (3) Has not been convicted of a crime under the laws of this state or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which is rationally related to the person's fitness or capacity to act as a home health aide;
- (4) Is able to speak and understand the English language or the language of the home health agency patient and the home health agency staff member who acts as the home health aide's supervisor;
- (5) Meets one of the following qualifications:
  - (a) Has successfully completed a home health aide training course which meets the standards described in section 71-6608.01;

- (b) Is a graduate of a school of nursing;
  - (c) Has been employed by a licensed home health agency as a home health aide II prior to September 6, 1991;
  - (d) Has successfully completed a course in a school of nursing which included practical clinical experience in fundamental nursing skills and has completed a competency evaluation as described in section 71-6608.02;
  - (e) Has successfully completed a basic course of training approved by the department for nurse aides as required by section 71-6039 and has completed a competency evaluation as described in section 71-6608.02;
  - (f) Has been employed by a licensed home health agency as a home health aide I prior to September 6, 1991, and has completed a competency evaluation as described in section 71-6608.02; or
  - (g) Has met the qualifications equal to one of those contained in subdivisions (a) through (f) of this subdivision in another state or territory of the United States; and
- (6) Has provided to the employing licensed home health agency proof of meeting the requirements of this section.

**Source:** Laws 1988, LB 1100, § 118; Laws 1991, LB 703, § 55; Laws 2002, LB 1062, § 63; Laws 2017, LB417, § 16.

**71-6604 Repealed. Laws 1991, LB 703, § 83.**

**71-6605 Home health aides; permitted acts.**

Home health aides may perform only personal care, assistance with the activities of daily living, and basic therapeutic care. A home health aide may provide medication only in compliance with the Medication Aide Act. Home health aides may not perform acts which require the exercise of nursing or medical judgment.

**Source:** Laws 1988, LB 1100, § 120; Laws 1991, LB 703, § 56; Laws 1998, LB 1354, § 42.

**Cross References**

**Medication Aide Act**, see section 71-6718.

**71-6606 Home health agencies; employ qualified aides.**

After January 1, 1989, home health agencies shall employ only home health aides qualified to provide home health care pursuant to sections 71-6601 to 71-6615. The department shall prescribe procedures for verification by home health agencies of successful completion of the requirements of section 71-6603. Home health agencies shall provide direction and supervision of home health aides. Home health agencies shall provide or make available to their home health aides four one-hour inservice programs per year on subjects relevant to home health care and shall verify such programs in a manner and method prescribed by the department.

**Source:** Laws 1988, LB 1100, § 121; Laws 1991, LB 703, § 57.

**71-6607 Home health agency; provide supervision; care plan.**

The home health agency shall provide supervision of home health aides by a Nebraska-licensed registered nurse.

Supervision of home health aide services consisting of personal care, assistance with activities of daily living, and measuring vital signs, if such measurements are taken at the request of the patient and are not required pursuant to the nursing care plan, shall include, at a minimum, an onsite visit to each patient, with or without the home health aide being present, once every sixty-two days and an onsite visit to observe each home health aide providing care and assistance and measuring vital signs once every six months.

Except for measuring vital signs at the request of the patient when such measurements are not required pursuant to the nursing care plan, supervision of home health aide services for basic therapeutic care shall include at a minimum an onsite visit to each patient, with or without the health aide being present, once every two weeks.

A care plan for home health aide services shall be developed for each patient by a Nebraska-licensed registered nurse and reviewed by the registered nurse as required by the patient's current condition or at least every sixty-two days.

**Source:** Laws 1988, LB 1100, § 122; Laws 1991, LB 703, § 58.

**71-6608 Home health aide; demonstrate competency; when required.**

After January 1, 1989, any home health aide not acting as such for a period of three years shall demonstrate competency in the tasks and duties which are the subject of home health aide training courses. The home health agency shall determine and verify competency of the home health aide in the manner and method prescribed by the department.

**Source:** Laws 1988, LB 1100, § 123.

**71-6608.01 Home health aide training course; standards; supervised training; documentation required.**

A home health aide training course shall meet the following standards with regard to content and duration of training, qualifications for instructors, and documentation of training:

(1) Such course shall address each of the following subject areas through classroom and supervised practical training totaling at least seventy-five hours, with at least sixteen hours devoted to supervised practical training after the individual being trained has completed at least sixteen hours of classroom training:

- (a) Communications skills;
- (b) Observation, reporting, and documentation of patient status and the care or service furnished;
- (c) Reading and recording temperature, pulse, and respiration;
- (d) Basic infection control procedures;
- (e) Basic elements of body functioning and changes in body functioning that must be reported to a home health aide's supervisor;
- (f) Maintenance of a clean, safe, and healthy environment;
- (g) Recognizing emergencies and knowledge of emergency procedures;
- (h) The physical, emotional, and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy, and his or her property;

(i) Appropriate and safe techniques in personal hygiene and grooming that include:

- (i) Bed bath;
- (ii) Bath: Sponge, tub, and shower;
- (iii) Shampoo: Sink, tub, and bed;
- (iv) Nail and skin care;
- (v) Oral hygiene; and
- (vi) Toileting and elimination;
- (j) Safe transfer techniques and ambulation;
- (k) Normal range of motion and positioning;
- (l) Adequate nutrition and fluid intake; and
- (m) Any other task that the home health agency may choose to have the home health aide perform;

(2) The training and supervision of home health aides during the supervised practical portion of the training shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which is in the provision of home health care, and who has supervised home health aide services for at least six months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse;

(3) The home health agency shall maintain sufficient documentation to demonstrate that the requirements of this section are met; and

(4) A home health aide training course may be offered by any organization, except that on or after September 6, 1991, a home health agency that has had its license denied, suspended, or revoked or has had admissions or readmissions prohibited shall not offer a home health aide training course for a period of twenty-four months after the occurrence of such action.

**Source:** Laws 1991, LB 703, § 59.

#### **71-6608.02 Home health aide competency evaluation; requirements.**

If a competency evaluation is required by section 71-6603, the home health agency shall be responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section. A home health aide competency evaluation shall address each of the subjects listed in subdivisions (1)(b) through (1)(m) of section 71-6608.01. The competency evaluation may be offered by any organization except as specified in subdivision (4) of such section. The competency evaluation shall be performed by a registered nurse. The subject areas listed in subdivisions (1)(c) and (1)(i) through (1)(k) of such section shall be evaluated after observation of the aide's performance of the tasks with a patient or other individual. The other subject areas in subdivision (1) of such section shall be evaluated through written examination or oral examination or after observation of a home health aide with a patient or other individual. A home health aide shall not be considered competent in any task for which he or she is evaluated as unsatisfactory, and the home health aide shall not perform that task without direct supervision by a Nebraska-licensed nurse until after he or she receives training in the task for which he or she was evaluated as unsatisfactory and subsequently is evaluated as satisfactory. A home health aide shall not be considered to

have successfully passed a competency evaluation if the aide has been evaluated as unsatisfactory in more than one of the required areas. The home health agency shall maintain documentation which demonstrates that the requirements of this section are met.

**Source:** Laws 1991, LB 703, § 60.

**71-6609 Repealed. Laws 2000, LB 819, § 162.**

**71-6610 Repealed. Laws 1991, LB 703, § 83.**

**71-6611 Repealed. Laws 1991, LB 703, § 83.**

**71-6612 Home health agency; verify competency.**

Each home health agency shall be responsible for verifying in a manner and method prescribed by the department that a home health aide is competent to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the agency.

**Source:** Laws 1988, LB 1100, § 127; Laws 1991, LB 703, § 62.

**71-6613 Repealed. Laws 1991, LB 703, § 83.**

**71-6614 Repealed. Laws 2000, LB 819, § 162.**

**71-6615 Hospice program; volunteers exempt.**

Sections 71-6601 to 71-6612 shall not apply to any volunteers working on behalf of a hospice licensed under the Health Care Facility Licensure Act who, as part of their volunteer duties, provide home health care.

**Source:** Laws 1988, LB 1100, § 130; Laws 1991, LB 703, § 64; Laws 1996, LB 1155, § 66; Laws 2000, LB 819, § 137.

#### Cross References

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

## ARTICLE 67

### MEDICATION REGULATION

#### (a) MEDICATION ASSISTANTS

Section	
71-6701.	Repealed. Laws 1998, LB 1354, § 48.
71-6702.	Repealed. Laws 1998, LB 1354, § 48.
71-6703.	Repealed. Laws 1998, LB 1354, § 48.
71-6704.	Repealed. Laws 1998, LB 1354, § 48.
71-6705.	Repealed. Laws 1998, LB 1354, § 48.
71-6706.	Repealed. Laws 1998, LB 1354, § 48.
71-6707.	Repealed. Laws 1998, LB 1354, § 48.
71-6708.	Repealed. Laws 1998, LB 1354, § 48.
71-6709.	Repealed. Laws 1998, LB 1354, § 48.
71-6710.	Repealed. Laws 1998, LB 1354, § 48.
71-6711.	Repealed. Laws 1998, LB 1354, § 48.
71-6712.	Repealed. Laws 1998, LB 1354, § 48.
71-6713.	Repealed. Laws 1998, LB 1354, § 48.
71-6714.	Repealed. Laws 1998, LB 1354, § 48.
71-6715.	Repealed. Laws 1998, LB 1354, § 48.
71-6716.	Repealed. Laws 1998, LB 1354, § 48.
71-6717.	Repealed. Laws 1998, LB 1354, § 48.

Section

(b) MEDICATION AIDE ACT

- 71-6718. Act, how cited.
- 71-6719. Legislative findings.
- 71-6720. Purpose of act; applicability.
- 71-6721. Terms, defined.
- 71-6722. Administration of medication; by whom.
- 71-6723. Administration of medication; methods authorized; conditions; additional methods; requirements.
- 71-6724. Medication administration records.
- 71-6725. Minimum standards for competencies.
- 71-6726. Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect.
- 71-6727. Medication Aide Registry; contents.
- 71-6728. Registration; renewal; fee.
- 71-6729. Screening and review.
- 71-6730. Failure to meet standards; violations; department; powers.
- 71-6731. Informal conference; procedure.
- 71-6732. Contested actions; procedure.
- 71-6733. Reapplication authorized; lifting of sanctions.
- 71-6734. Fees.
- 71-6735. Facility, school, or child care facility; subject to discipline.
- 71-6736. Alleged incompetence; reports required; confidential; immunity.
- 71-6737. Complaints, investigational records, reports, and investigational files; disclosure; restrictions.
- 71-6738. Convictions; reports required.
- 71-6739. Prohibited act; exceptions.
- 71-6740. Injunction.
- 71-6741. Violation; penalty.
- 71-6742. Eligibility for Licensee Assistance Program.

(c) STORAGE, HANDLING, AND DISPOSAL OF MEDICATION

- 71-6743. Rules and regulations.

(a) MEDICATION ASSISTANTS

- 71-6701 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6702 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6703 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6704 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6705 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6706 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6707 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6708 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6709 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6710 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6711 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6712 Repealed. Laws 1998, LB 1354, § 48.**
- 71-6713 Repealed. Laws 1998, LB 1354, § 48.**

**71-6714 Repealed. Laws 1998, LB 1354, § 48.**

**71-6715 Repealed. Laws 1998, LB 1354, § 48.**

**71-6716 Repealed. Laws 1998, LB 1354, § 48.**

**71-6717 Repealed. Laws 1998, LB 1354, § 48.**

(b) MEDICATION AIDE ACT

**71-6718 Act, how cited.**

Sections 71-6718 to 71-6742 shall be known and may be cited as the Medication Aide Act.

**Source:** Laws 1998, LB 1354, § 8.

**71-6719 Legislative findings.**

The Legislature finds that the administration of medications by persons other than oneself or one’s caretaker should be a regulated act and there is a need to define a system to safely assist individuals to take medications who do not have the ability to take medications independently. The Medication Aide Act sets forth provisions of such a system.

**Source:** Laws 1998, LB 1354, § 9.

**71-6720 Purpose of act; applicability.**

(1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (a) competent individuals, (b) caretakers who are parents, foster parents, family, friends or legal guardians, and (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is provided through a licensed home health agency or licensed or certified home and community-based provider.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 71-6501.

**Source:** Laws 1998, LB 1354, § 10; Laws 2007, LB236, § 44.

**71-6721 Terms, defined.**

For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under the Child Care Licensing Act;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

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

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the department to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for persons with developmental disabilities has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the department;

(16) Nonprescription drug has the definition found in section 38-2829;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 38-2841;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;



- (21) Recipient means a person who is receiving medication;
- (22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and
- (23) School means an entity or person meeting the requirements for a school set by Chapter 79.

**Source:** Laws 1998, LB 1354, § 11; Laws 2000, LB 819, § 138; Laws 2001, LB 398, § 81; Laws 2004, LB 1005, § 132; Laws 2007, LB296, § 663; Laws 2007, LB463, § 1286; Laws 2013, LB23, § 39.

**Cross References**

Child Care Licensing Act, see section 71-1908.

**71-6722 Administration of medication; by whom.**

Administration of medication may be done by competent individuals to themselves, by caretakers of recipients receiving medication, or by licensed health care professionals for whom administration of medication is included in their scope of practice.

A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may participate in medication administration, when directed and monitored by a competent individual, caretaker, or health care professional, by providing medications in compliance with the Medication Aide Act and rules and regulations adopted and promulgated under the act. In each case, the individual responsible for providing direction and monitoring shall be identified in writing and indication that such individual has accepted such responsibility shall also be identified in writing.

**Source:** Laws 1998, LB 1354, § 12.

**71-6723 Administration of medication; methods authorized; conditions; additional methods; requirements.**

(1) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may provide routine medications by the following routes: (a) Oral; (b) inhalation; (c) topical; and (d) instillation into the eyes, ears, and nose.

(2) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or staff member of a school may provide medication by additional routes not listed in subsection (1) of this section, provide PRN medication, or participate in observing and reporting for monitoring medications only under the following conditions:

(a) A determination has been made by a competent individual, a caretaker, or a licensed health care professional and placed in writing that the medication aide, person licensed to operate a child care facility or staff member of a child care facility, or staff member of a school is competent to perform these activities; and

(b) It has been determined by a licensed health care professional and placed in writing that these activities can be done safely for a specified recipient.

Direction for additional routes not listed in subsection (1) of this section must be for recipient-specific procedures and must be in writing. Direction for PRN

medication must be in writing and include the parameters for provision of the PRN medication. Direction for observing and reporting for monitoring medication must be in writing and include the parameters for the observation and reporting. A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school acting under this subsection shall comply with the written directions. Subdivision (b) of this subsection does not apply to nonprescription drugs when direction and monitoring is done by a competent individual for himself or herself or by a caretaker.

**Source:** Laws 1998, LB 1354, § 13.

#### **71-6724 Medication administration records.**

A medication aide, a facility using a medication aide, a child care facility using the services of a person licensed to operate a child care facility or a staff member of a child care facility, or a school using the services of a staff member of the school shall keep and maintain accurate medication administration records. The medication administration records shall be available to the Department of Health and Human Services and the State Department of Education for inspection and copying. The medication administration records shall include information and data the departments require by rules and regulations adopted under the Medication Aide Act.

**Source:** Laws 1998, LB 1354, § 14; Laws 2007, LB296, § 664.

#### **71-6725 Minimum standards for competencies.**

(1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient's right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide, except one who is employed by a nursing home, an intermediate care facility for persons with developmental disabilities, or an assisted-living facility, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine

that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-5903, a nursing home, or an intermediate care facility for persons with developmental disabilities shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section, except that a medication aide who has, prior to January 1, 2003, completed a twenty-hour course and passed an examination developed and administered by the Department of Health and Human Services may complete a second twenty-hour course supplemental to the first twenty-hour course in lieu of completing the forty-hour course. The department shall adopt and promulgate rules and regulations regarding the procedures and criteria for curriculum. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) Medication aides providing services in nursing homes or intermediate care facilities for persons with developmental disabilities shall also meet the requirements set forth in section 71-6039.

**Source:** Laws 1998, LB 1354, § 15; Laws 2000, LB 819, § 139; Laws 2002, LB 1021, § 103; Laws 2007, LB296, § 665; Laws 2013, LB23, § 40; Laws 2018, LB439, § 8.  
Effective date July 19, 2018.

**71-6726 Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect.**

(1) To register as a medication aide, an individual shall (a) have successfully completed the requirements in section 71-6725, (b) be at least eighteen years of age, (c) be of good moral character, (d) file an application with the department, and (e) pay the applicable fee.

(2) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not register as a medication aide.

(3) An applicant or medication aide shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 71-6725 or it reflects on the moral character of the applicant or medication aide.

(4) An applicant or medication aide may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Medication Aide Registry.

(5) If a person registered as a medication aide on the Medication Aide Registry becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a medication aide becomes null and void as of the date of licensure.

**Source:** Laws 1998, LB 1354, § 16; Laws 2007, LB185, § 44; Laws 2007, LB463, § 1287.

**71-6727 Medication Aide Registry; contents.**

(1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for persons with developmental disabilities, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

**Source:** Laws 1998, LB 1354, § 17; Laws 2007, LB463, § 1288; Laws 2013, LB23, § 41.

**71-6728 Registration; renewal; fee.**

Registration as a medication aide shall be renewed biennially based upon competency. The department may prescribe by rule and regulation how a medication aide can show competency for purposes of renewal. Payment of the applicable fee shall be a condition of renewal. After September 1, 2007, any registration that is renewed shall expire two years after the date the registration would have expired if it had not been renewed. A medication aide who provides medication aide services prior to registration or after the date the registration expires shall be subject to the civil penalty prescribed in section 38-198.

**Source:** Laws 1998, LB 1354, § 18; Laws 2007, LB283, § 2; Laws 2007, LB463, § 1289.

**71-6729 Screening and review.**

The department may conduct periodic and random screening or review of entities conducting competency assessments or courses and of the activities of applicants and medication aides as may be necessary to ensure compliance with the Medication Aide Act and the rules and regulations.

**Source:** Laws 1998, LB 1354, § 19.

**71-6730 Failure to meet standards; violations; department; powers.**

(1) The department may deny registration or refuse renewal of or remove a registration from the Medication Aide Registry for failure to meet the standards in section 71-6725 or for violation of the Medication Aide Act or the rules and regulations.

(2) If the department proposes to deny, refuse renewal of, or remove a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, or removal shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section

25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

**Source:** Laws 1998, LB 1354, § 20.

**71-6731 Informal conference; procedure.**

If an informal conference is requested, the department shall assign a representative of the department to hold an informal conference with the applicant or registrant within fifteen working days after receipt of a request. Within seven working days after the conclusion of such conference, the representative shall affirm, modify, or dismiss the action. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the action and shall immediately transmit copies of the statement to the department and to the applicant or the registrant. If the representative affirms or modifies the action, it shall become final unless the applicant or registrant, within ten working days after receipt of the written notice, requests in writing a formal hearing to contest the action.

**Source:** Laws 1998, LB 1354, § 21.

**71-6732 Contested actions; procedure.**

Except as provided by section 71-6731, an applicant or registrant who desires to contest an action or to further contest an affirmed or modified action shall do so in the manner provided in the Administrative Procedure Act for contested cases. The chief medical officer as designated in section 81-3115 shall be the decisionmaker in a contested case under this section. The hearings on a petition for judicial review of any final decision regarding an action for an alleged violation shall be set for hearing at the earliest possible date. The times for pleadings and hearings in such action shall be set by the judge of the court with the object of securing a decision at the earliest possible time.

**Source:** Laws 1998, LB 1354, § 22; Laws 2007, LB296, § 666.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-6733 Reapplication authorized; lifting of sanctions.**

A person whose registration has been denied, refused renewal, or removed from the Medication Aide Registry may reapply for registration or for lifting of the disciplinary sanction at any time after one year has elapsed since the date such registration was denied, refused renewal, or removed from the registry, in accordance with the rules and regulations.

**Source:** Laws 1998, LB 1354, § 23; Laws 2007, LB185, § 45.

**71-6734 Fees.**

The department shall establish and collect fees for credentialing activities under the Medication Aide Act as provided in sections 38-151 to 38-157.

**Source:** Laws 1998, LB 1354, § 24; Laws 2002, LB 1021, § 104; Laws 2003, LB 242, § 147; Laws 2007, LB463, § 1290.

**71-6735 Facility, school, or child care facility; subject to discipline.**

A facility shall be subject to discipline under the Health Care Facility Licensure Act or other relevant statutes for violation of the Medication Aide Act or the rules and regulations. A school shall be subject to discipline under Chapter 79 for violation of the Medication Aide Act or the applicable rules and regulations. A child care facility shall be subject to discipline under the Child Care Licensing Act for violation of the Medication Aide Act or the rules and regulations.

**Source:** Laws 1998, LB 1354, § 25; Laws 2000, LB 819, § 140; Laws 2004, LB 1005, § 133.

**Cross References**

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

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

**71-6736 Alleged incompetence; reports required; confidential; immunity.**

(1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

**Source:** Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34; Laws 2011, LB431, § 14.

**Cross References**

**Health Care Quality Improvement Act**, see section 71-7904.

**Patient Safety Improvement Act**, see section 71-8701.

**71-6737 Complaints, investigational records, reports, and investigational files; disclosure; restrictions.**

Complaints, investigational records, reports, and investigational files of any kind of the department shall not be public record, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except an informal conference or formal hearing before the department. Such complaints, investigational records, reports, and investigational files shall be a public record if made part of the record of a formal hearing before the department. No person, including, but not limited to, department employees, having access to complaints, investigational records, reports, or investigational files, shall disclose such records or

information except as required for investigation of the alleged violation or for purposes of a hearing before the department. Such information, files, and records may be disclosed to other law enforcement agencies by the department, and such disclosure shall not make the information, files, or records public records.

**Source:** Laws 1998, LB 1354, § 27.

**71-6738 Convictions; reports required.**

On and after July 1, 1999, the clerk of any county court or district court in this state shall report to the department the conviction in such court of any medication aide of any felony or any misdemeanor. The Attorney General or the city prosecutor or county attorney prosecuting any such criminal action shall provide the court with information concerning the registration of the defendant. Notice to the department shall be filed within thirty days after the conviction in a manner agreed to by the department and the State Court Administrator.

**Source:** Laws 1998, LB 1354, § 28.

**71-6739 Prohibited act; exceptions.**

On and after July 1, 1999, no person, facility, or school shall use or employ any individual to provide medications to a recipient unless the individual is a medication aide registered under the Medication Aide Act or is otherwise authorized to administer or provide medication, except that a child care facility may use or employ an individual licensed to operate a child care facility or a staff member of a child care facility or a school may use or employ a staff member of a school determined to be competent under the act. On and after July 1, 1999, no individual shall provide medication to a recipient unless the individual is a medication aide registered under the act or is otherwise authorized to administer or provide medication. Nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

**Source:** Laws 1998, LB 1354, § 29.

**71-6740 Injunction.**

The department may maintain an action for an injunction in the name of the state for violation of the Medication Aide Act or the rules and regulations.

**Source:** Laws 1998, LB 1354, § 30.

**71-6741 Violation; penalty.**

Any person who intentionally violates the Medication Aide Act is guilty of a Class III misdemeanor.

**Source:** Laws 1998, LB 1354, § 31.

**71-6742 Eligibility for Licensee Assistance Program.**

Medication aides are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

**Source:** Laws 1998, LB 1354, § 32; Laws 2007, LB463, § 1291.

## (c) STORAGE, HANDLING, AND DISPOSAL OF MEDICATION

**71-6743 Rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations which shall ensure proper storage, handling, and disposal of medication in facilities and schools as defined in section 71-6721.

**Source:** Laws 1998, LB 1354, § 37; Laws 2007, LB296, § 667.

**ARTICLE 68****LABORATORY ACCREDITATION**

## Section

71-6801.	Repealed. Laws 2000, LB 1115, § 93.
71-6802.	Repealed. Laws 2000, LB 1115, § 93.
71-6803.	Repealed. Laws 2000, LB 1115, § 93.
71-6804.	Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.
71-6805.	Repealed. Laws 2000, LB 1115, § 93.
71-6806.	Repealed. Laws 2000, LB 1115, § 93.
71-6807.	Repealed. Laws 2000, LB 1115, § 93.
71-6808.	Repealed. Laws 2000, LB 1115, § 93.
71-6809.	Repealed. Laws 2000, LB 1115, § 93.
71-6810.	Repealed. Laws 2000, LB 1115, § 93.
71-6811.	Repealed. Laws 2000, LB 1115, § 93.
71-6812.	Repealed. Laws 2000, LB 1115, § 93.
71-6813.	Repealed. Laws 2000, LB 1115, § 93.
71-6814.	Repealed. Laws 2000, LB 1115, § 93.
71-6815.	Repealed. Laws 2000, LB 1115, § 93.
71-6815.01.	Repealed. Laws 2000, LB 1115, § 93.
71-6816.	Repealed. Laws 2000, LB 1115, § 93.
71-6817.	Repealed. Laws 2000, LB 1115, § 93.
71-6818.	Repealed. Laws 2000, LB 1115, § 93.
71-6819.	Repealed. Laws 2000, LB 1115, § 93.
71-6820.	Repealed. Laws 2000, LB 1115, § 93.
71-6821.	Repealed. Laws 2000, LB 1115, § 93.
71-6822.	Repealed. Laws 2000, LB 1115, § 93.
71-6823.	Repealed. Laws 2000, LB 1115, § 93.
71-6823.01.	Repealed. Laws 2000, LB 1115, § 93.
71-6824.	Repealed. Laws 2000, LB 1115, § 93.
71-6825.	Repealed. Laws 2000, LB 1115, § 93.
71-6826.	Repealed. Laws 2000, LB 1115, § 93.
71-6827.	Repealed. Laws 2000, LB 1115, § 93.
71-6828.	Repealed. Laws 2000, LB 1115, § 93.
71-6829.	Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.
71-6830.	Repealed. Laws 2000, LB 1115, § 93.
71-6831.	Repealed. Laws 2000, LB 1115, § 93.
71-6832.	Human genetic testing; requirements.
71-6833.	Forensic DNA laboratories; requirements.

**71-6801 Repealed. Laws 2000, LB 1115, § 93.**

**71-6802 Repealed. Laws 2000, LB 1115, § 93.**

**71-6803 Repealed. Laws 2000, LB 1115, § 93.**

**71-6804 Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.**

**71-6805 Repealed. Laws 2000, LB 1115, § 93.**

**71-6806 Repealed. Laws 2000, LB 1115, § 93.**



- 71-6807 Repealed. Laws 2000, LB 1115, § 93.
- 71-6808 Repealed. Laws 2000, LB 1115, § 93.
- 71-6809 Repealed. Laws 2000, LB 1115, § 93.
- 71-6810 Repealed. Laws 2000, LB 1115, § 93.
- 71-6811 Repealed. Laws 2000, LB 1115, § 93.
- 71-6812 Repealed. Laws 2000, LB 1115, § 93.
- 71-6813 Repealed. Laws 2000, LB 1115, § 93.
- 71-6814 Repealed. Laws 2000, LB 1115, § 93.
- 71-6815 Repealed. Laws 2000, LB 1115, § 93.
- 71-6815.01 Repealed. Laws 2000, LB 1115, § 93.
- 71-6816 Repealed. Laws 2000, LB 1115, § 93.
- 71-6817 Repealed. Laws 2000, LB 1115, § 93.
- 71-6818 Repealed. Laws 2000, LB 1115, § 93.
- 71-6819 Repealed. Laws 2000, LB 1115, § 93.
- 71-6820 Repealed. Laws 2000, LB 1115, § 93.
- 71-6821 Repealed. Laws 2000, LB 1115, § 93.
- 71-6822 Repealed. Laws 2000, LB 1115, § 93.
- 71-6823 Repealed. Laws 2000, LB 1115, § 93.
- 71-6823.01 Repealed. Laws 2000, LB 1115, § 93.
- 71-6824 Repealed. Laws 2000, LB 1115, § 93.
- 71-6825 Repealed. Laws 2000, LB 1115, § 93.
- 71-6826 Repealed. Laws 2000, LB 1115, § 93.
- 71-6827 Repealed. Laws 2000, LB 1115, § 93.
- 71-6828 Repealed. Laws 2000, LB 1115, § 93.
- 71-6829 Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.
- 71-6830 Repealed. Laws 2000, LB 1115, § 93.
- 71-6831 Repealed. Laws 2000, LB 1115, § 93.
- 71-6832 Human genetic testing; requirements.**

All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has require-

ments that are substantially equivalent to or more comprehensive than those of the college.

**Source:** Laws 2001, LB 432, § 4.

### **71-6833 Forensic DNA laboratories; requirements.**

Except as provided under section 81-2010, all forensic DNA laboratories performing work on behalf of the state or a political subdivision shall be accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

**Source:** Laws 2001, LB 432, § 5.

## **ARTICLE 69**

### **ABORTION**

#### **Cross References**

**Abortion**, prohibited acts, criminal penalties, see section 28-325 et seq.

#### **Section**

- 71-6901. Terms, defined.
- 71-6902. Performance of abortion; notarized written consent required.
- 71-6902.01. Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.
- 71-6902.02. Coercion to obtain abortion; prohibited; denial of financial support; effect.
- 71-6903. Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.
- 71-6904. Appeal; procedure; confidentiality.
- 71-6905. Court proceedings; no fees or costs required.
- 71-6906. Performance of abortion; consent not required; when.
- 71-6907. Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.
- 71-6908. Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.
- 71-6909. Physician; report; contents; form; compilation by department.
- 71-6910. Sections; how construed; intent.
- 71-6911. Declaration; confidentiality.

### **71-6901 Terms, defined.**

For purposes of sections 71-6901 to 71-6911:

(1) Abortion means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (a) Save the life or preserve the health of an unborn child;
- (b) Remove a dead unborn child caused by a spontaneous abortion; or
- (c) Remove an ectopic pregnancy;

(2) Coercion means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter;

(3) Consent means a declaration acknowledged before a notary public and signed by a parent or legal guardian of the pregnant woman or an alternate person as described in section 71-6902.01 declaring that the principal has been informed that the pregnant woman intends to undergo a procedure pursuant to subdivision (1) of section 71-6901 and that the principal consents to the procedure;

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

(5) Emancipated means a situation in which a person under eighteen years of age has been married or legally emancipated;

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

(7) Incompetent means any person who has been adjudged a disabled person and has had a guardian appointed under sections 30-2617 to 30-2629;

(8) Medical emergency means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

(9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act. Physician includes a person who practices osteopathy; and

(10) Pregnant woman means an unemancipated woman under eighteen years of age who is pregnant or a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629 because of a finding of incapacity, disability, or incompetency who is pregnant.

**Source:** Laws 1991, LB 425, § 1; Laws 2011, LB690, § 3.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-6902 Performance of abortion; notarized written consent required.**

Except in the case of a medical emergency or except as provided in sections 71-6902.01, 71-6903, and 71-6906, no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or a legal guardian or, in the case of a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629, he or she first obtains the notarized written consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only his or her child's or ward's best interest.

**Source:** Laws 1991, LB 425, § 2; Laws 2011, LB690, § 4.

**71-6902.01 Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.**

If the pregnant woman declares in a signed written statement that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 by either of her

parents or her legal guardians, then the attending physician shall obtain the notarized written consent required by section 71-6902 from a grandparent specified by the pregnant woman. The physician who intends to perform the abortion shall certify in the pregnant woman's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this section shall not be civilly or criminally liable under sections 71-6901 to 71-6911 for failure to obtain consent. If such a declaration is made, the attending physician or his or her agent shall inform the pregnant woman of his or her duty to notify the proper authorities pursuant to sections 28-372 and 28-711.

**Source:** Laws 2011, LB690, § 5.

**71-6902.02 Coercion to obtain abortion; prohibited; denial of financial support; effect.**

No parent, guardian, or any other person shall coerce a pregnant woman to obtain an abortion. If a pregnant woman is denied financial support by her parents, guardians, or custodians due to her refusal to obtain an abortion, the pregnant woman shall be deemed emancipated for purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion.

**Source:** Laws 2011, LB690, § 6.

**71-6903 Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.**

(1) The requirements and procedures under this section are available to pregnant women whether or not they are residents of this state.

(2) If a pregnant woman elects not to obtain the consent of her parents or guardians, a judge of a district court, separate juvenile court, or county court sitting as a juvenile court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if the court determines by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion. If the court does not make the finding specified in this subsection or subsection (3) of this section, it shall dismiss the petition.

(3) If the court finds, by clear and convincing evidence, that there is evidence of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 of the pregnant woman by a parent or a guardian or that an abortion without the consent of a parent or a guardian is in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or a guardian. If the court does not make the finding specified in this subsection or subsection (2) of this section, it shall dismiss the petition.

(4) The pregnant woman may commence an action for waiver of the consent requirement by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator.

(5) The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a

waiver of consent, including the name, address, telephone number, and facsimile number of each court in the state. A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The State Court Administrator shall also make such forms and instructions available on a web site maintained by the Supreme Court. The clerk of the court shall assist in administrative matters and filing the petition for waiver of consent.

(6) Proceedings in court pursuant to this section shall be confidential and shall ensure the anonymity of the pregnant woman. The pregnant woman shall have the right to file her petition in the court using a pseudonym or using solely her initials. Proceedings shall be held in camera. Only the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and a person whose presence is specifically requested by the pregnant woman or the pregnant woman's attorney may attend the hearing on the petition. All testimony, all documents, all other evidence presented to the court, the petition and any order entered, and all records of any nature and kind relating to the matter shall be maintained and sealed by the clerk of the court and shall not be open to any person except upon order of the court for good cause shown. A separate docket or the confidential index within the electronic case management system for the purposes of this section shall be maintained by the clerk of the court and shall likewise be sealed and not opened to inspection by any person except upon order of the court for good cause shown.

(7) A pregnant woman who is subject to this section may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant woman that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Such counsel shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held.

(8) Proceedings in court pursuant to this section shall be given such precedence on the trial docket over other pending matters so that the court may reach a decision promptly and without delay to serve the best interest of the pregnant woman. In no case shall the court fail to rule within seven calendar days from the time the petition is filed. If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall issue within three days.

(9) The court shall issue a written order which includes specific factual findings and legal conclusions supporting its decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and any other person designated by the pregnant woman to receive the order. Further, the court shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman.

**Source:** Laws 1991, LB 425, § 3; Laws 2011, LB690, § 7; Laws 2018, LB193, § 88.

Operative date July 19, 2018.

A petition for waiver of parental consent—which seeks authorization from the court to have an abortion without the notarized written consent of a parent or guardian of the petitioner—is limited in scope. Because of the limited scope of such an action, the district court acts as a special statutory tribunal to summarily decide the issues authorized by this section. In re Petition of Anonymous 5, 286 Neb. 640, 838 N.W.2d 226 (2013).

The obvious intent of subsection (3) of this section is to avoid requiring a pregnant woman to obtain the consent of a parent or guardian who has abused or neglected her, acts which evidence an obvious disregard of her best interests or well-being. In re Petition of Anonymous 5, 286 Neb. 640, 838 N.W.2d 226 (2013).

Under the “evidence of abuse . . . or child abuse or neglect” provision of subsection (3) of this section, the pregnant woman must establish that a parent or guardian, who occupies that role in relation to her at the time she files her petition for waiver of parental consent, has either abused her as defined in section

28-351 or subjected her to child abuse or neglect as defined in section 28-710. In re Petition of Anonymous 5, 286 Neb. 640, 838 N.W.2d 226 (2013).

When the Legislature has expressly chosen a judicial forum for the resolution of issues under this section, it is not the Nebraska Supreme Court’s province to rewrite this section or suggest alternate or additional procedures to be utilized in this context, unless the judicial bypass statute violates the state or federal Constitution or a federal treaty. In re Petition of Anonymous 5, 286 Neb. 640, 838 N.W.2d 226 (2013).

In a proceeding brought under section 71-6901 et seq., the burden of proof on all issues rests with the pregnant woman, and such burden must be established by clear and convincing evidence. As related to a pregnant woman’s abortion decision, maturity is not solely a matter of social skills, level of intelligence, or verbal skills, but, more importantly, a matter of experience, perspective, and judgment. In re Petition of Anonymous I, 251 Neb. 424, 558 N.W.2d 784 (1997).

### **71-6904 Appeal; procedure; confidentiality.**

(1) An appeal to the Supreme Court shall be available to any pregnant woman for whom a court denies an order authorizing an abortion without consent. An order authorizing an abortion without consent shall not be subject to appeal.

(2) An adverse ruling by the court may be appealed to the Supreme Court.

(3) A pregnant woman may file a notice of appeal of any final order to the Supreme Court. The State Court Administrator shall develop the form for notice of appeal and accompanying instructions on the procedure for an appeal. A sufficient number of forms for notice of appeal and instructions shall be made available in each courthouse in such place that members of the general public can obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel.

(4) The clerk of the court shall cause the court transcript and bill of exceptions to be filed with the Supreme Court within four business days, but in no event later than seven calendar days, from the date of the filing of the notice of appeal.

(5) In all appeals under this section the pregnant woman shall have the right of a confidential and expedited appeal and the right to counsel at the appellate level if not already represented. Such counsel shall be appointed by the court and shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held. The pregnant woman shall not be required to appear.

(6) The Supreme Court shall hear the appeal de novo on the record and issue a written decision which shall be provided immediately to the pregnant woman, the pregnant woman’s guardian ad litem, the pregnant woman’s attorney, or any other person designated by the pregnant woman to receive the order.

(7) The Supreme Court shall rule within seven calendar days from the time of the docketing of the appeal in the Supreme Court.

(8) The Supreme Court shall adopt and promulgate rules to ensure that proceedings under this section are handled in a confidential and expeditious manner.

**Source:** Laws 1991, LB 425, § 4; Laws 2011, LB690, § 8.

A petition for waiver of parental consent—which seeks authorization from the court to have an abortion without the notarized written consent of a parent or guardian of the petitioner—is

limited in scope. In re Petition of Anonymous 5, 286 Neb. 640, 838 N.W.2d 226 (2013).

In an appeal brought under the provisions of section 71-6901 et seq., this section provides that the Nebraska Supreme Court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at

issue; however, it considers, and may give weight to, the fact that the judge below heard and observed the witnesses. In re Petition of Anonymous I, 251 Neb. 424, 558 N.W.2d 784 (1997).

**71-6905 Court proceedings; no fees or costs required.**

No filing fees or costs shall be required of any pregnant woman at either the trial or appellate level for any proceedings pursuant to sections 71-6901 to 71-6911.

**Source:** Laws 1991, LB 425, § 5; Laws 2011, LB690, § 9.

**71-6906 Performance of abortion; consent not required; when.**

Consent shall not be required pursuant to sections 71-6901 to 71-6911 if any of the following conditions exist:

- (1) The attending physician certifies in the pregnant woman’s medical record that a medical emergency exists and there is insufficient time to obtain the required consent; or
- (2) Consent is waived under section 71-6903.

**Source:** Laws 1991, LB 425, § 6; Laws 2005, LB 116, § 23; Laws 2011, LB690, § 10.

**71-6907 Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.**

(1) Any physician or attending physician who knowingly and intentionally or with reckless disregard performs an abortion in violation of sections 71-6901 to 71-6906 and 71-6909 to 71-6911 shall be guilty of a Class III misdemeanor.

(2) Performance of an abortion in violation of such sections shall be grounds for a civil action by a person wrongfully denied the right and opportunity to consent.

(3) A person shall be immune from liability under such sections (a) if he or she establishes by written evidence that he or she relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with such sections are bona fide and true or (b) if the person has performed an abortion authorized by a court order issued pursuant to section 71-6903 or 71-6904.

(4) Any person not authorized to provide consent under sections 71-6901 to 71-6911 who provides consent is guilty of a Class III misdemeanor.

(5) Any person who coerces a pregnant woman to have an abortion is guilty of a Class III misdemeanor.

**Source:** Laws 1991, LB 425, § 7; Laws 2011, LB690, § 11.

**71-6908 Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.**

The Legislature recognizes and hereby declares that some teenage pregnancies are a direct or indirect result of family or foster family abuse, neglect, or sexual assault. The Legislature further recognizes that the actions of abuse, neglect, or sexual assault are crimes regardless of whether they are committed by strangers, acquaintances, or family members. The Legislature further recognizes the need for a parental consent bypass system as set out in section

71-6903 due to the number of unhealthy family environments in which some pregnant women reside. The Legislature encourages county attorneys to prosecute persons accused of committing acts of abuse, incest, neglect, or sexual assault pursuant to sections 28-319, 28-319.01, 28-320, 28-320.01, 28-703, and 28-707 even if the alleged crime is committed by a biological or adoptive parent, foster parent, or other biological, adoptive, or foster family member.

**Source:** Laws 1991, LB 425, § 8; Laws 2006, LB 1199, § 56; Laws 2011, LB690, § 13.

**71-6909 Physician; report; contents; form; compilation by department.**

A monthly report indicating only the number of consents obtained under sections 71-6901 to 71-6911, the number of times in which exceptions were made to the consent requirement under such sections, the type of exception, the pregnant woman’s age, and the number of prior pregnancies and prior abortions of the pregnant woman shall be filed by the physician with the department on forms prescribed by the department. The name of the pregnant woman shall not be used on the forms. A compilation of the data reported shall be made by the department on an annual basis and shall be available to the public.

**Source:** Laws 2011, LB690, § 12.

**71-6910 Sections; how construed; intent.**

(1) Nothing in sections 71-6901 to 71-6911 shall be construed as creating or recognizing a right to abortion.

(2) It is not the intent of sections 71-6901 to 71-6911 to make lawful an abortion that is currently unlawful.

**Source:** Laws 2011, LB690, § 14.

**71-6911 Declaration; confidentiality.**

A declaration under sections 71-6901 to 71-6911 shall be confidential except as would be required in any court proceedings under such sections.

**Source:** Laws 2011, LB690, § 15.

**ARTICLE 70**

**BREAST AND CERVICAL CANCER AND MAMMOGRAPHY**

Section	
71-7001.	Mammography; health care facilities; notice; powers and duties.
71-7001.01.	Legislative findings.
71-7002.	Repealed. Laws 2008, LB 797, § 35.
71-7003.	Repealed. Laws 2008, LB 797, § 35.
71-7003.01.	Department; funding; powers.
71-7004.	Repealed. Laws 2008, LB 797, § 35.
71-7005.	Repealed. Laws 2008, LB 797, § 35.
71-7006.	Repealed. Laws 2008, LB 797, § 35.
71-7007.	Repealed. Laws 2008, LB 797, § 35.
71-7008.	Repealed. Laws 2008, LB 797, § 35.
71-7009.	Repealed. Laws 2008, LB 797, § 35.
71-7010.	Breast and Cervical Cancer Cash Fund; created; use; investment.
71-7011.	Repealed. Laws 2008, LB 797, § 35.
71-7012.	Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.
71-7013.	Immunity from liability; when.



**71-7001 Mammography; health care facilities; notice; powers and duties.**

(1) All health care facilities that perform mammography shall include in the summary of the mammography report to be provided to a patient information that identifies the patient's individual breast tissue classification based on the Breast Imaging Reporting and Data System established by the American College of Radiology. If a facility determines that a patient has heterogeneously dense or extremely dense breast tissue, the summary of the mammography report shall also include a notice substantially similar to the following:

Your mammogram indicates that you have dense breast tissue. Dense breast tissue is a normal finding that is present in about forty percent of women. Dense breast tissue can make it more difficult to detect cancer on a mammogram and may be associated with a slightly increased risk for breast cancer. This information is provided to raise your awareness of the impact of breast density on cancer detection and to encourage you to discuss this issue, as well as other breast cancer risk factors, with your health care provider as you decide together which screening options may be right for you.

(2) A facility that performs mammography may update the language in the notice to reflect advances in science and technology, as long as it continues to notify patients about the frequency of dense breast tissue and its effect on the accuracy of mammograms and encourage patients to discuss the issue with their health care provider.

(3) This section does not create a duty of care or other legal obligation beyond the duty to provide notice as set forth in this section.

**Source:** Laws 2017, LB195, § 1.

**71-7001.01 Legislative findings.**

The Legislature finds that private citizens and charitable organizations have donated and granted funds to the department to pay for definitive diagnostic procedures for women whose abnormal test results have been discovered through the department's program for early detection of breast and cervical cancer. The Legislature recognizes the generosity of its citizens and charitable organizations who donate their time and money to provide funds to their fellow citizens.

It is the intent of the Legislature to permit the department to obtain and expend such funds to pay for definitive diagnostic procedures for women enrolled in the program.

**Source:** Laws 1995, LB 68, § 4.

**71-7002 Repealed. Laws 2008, LB 797, § 35.**

**71-7003 Repealed. Laws 2008, LB 797, § 35.**

**71-7003.01 Department; funding; powers.**

The department may apply for, receive, and administer funds received from private sources to pay for definitive diagnostic procedures for women enrolled in the breast and cervical cancer program authorized under sections 71-7001.01 to 71-7013 and funded through a grant from the United States Department of Health and Human Services.

This section does not create an entitlement for enrollees in the programs. Payments may be made to the extent funds are available in the order requests are received by the department.

The funds obtained for definitive diagnostic procedures shall be remitted to the State Treasurer for credit to the Breast and Cervical Cancer Cash Fund. Money credited to the fund for purposes of this section shall be used to reimburse the costs of definitive diagnostic procedures as provided in this section.

**Source:** Laws 1995, LB 68, § 6; Laws 2008, LB797, § 23.

**71-7004 Repealed. Laws 2008, LB 797, § 35.**

**71-7005 Repealed. Laws 2008, LB 797, § 35.**

**71-7006 Repealed. Laws 2008, LB 797, § 35.**

**71-7007 Repealed. Laws 2008, LB 797, § 35.**

**71-7008 Repealed. Laws 2008, LB 797, § 35.**

**71-7009 Repealed. Laws 2008, LB 797, § 35.**

**71-7010 Breast and Cervical Cancer Cash Fund; created; use; investment.**

The Breast and Cervical Cancer Cash Fund is created. The fund shall consist of any money appropriated to it by the Legislature, any money received by the department for the program, including federal and other public and private funds, and funds credited under section 71-7003.01. Money in the fund may be used to reimburse expenses of members of the Breast and Cervical Cancer Advisory Committee, expenses of the program for early detection of breast and cervical cancer funded through a grant from the United States Department of Health and Human Services, and funds received under section 71-7003.01. 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 1991, LB 256, § 10; Laws 1994, LB 1066, § 71; Laws 1995, LB 68, § 9; Laws 2008, LB797, § 24.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-7011 Repealed. Laws 2008, LB 797, § 35.**

**71-7012 Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.**

The Breast and Cervical Cancer Advisory Committee is established. The committee consists of the members of the Mammography Screening Committee serving immediately prior to September 9, 1995, and eight additional members appointed by the chief executive officer of the department or his or her designee who have expertise or a personal interest in cervical cancer. The committee shall consist of not more than twenty-four volunteer members, at least eight of whom are women, appointed by the chief executive officer or his or her designee. Members of the committee shall be persons interested in health care, the promotion of breast cancer screening, and cervical cancer and shall

be drawn from both the private sector and the public sector. At least one member shall be a person who has or who has had breast cancer.

Of the initial members of the committee, four shall be appointed for terms of one year and four shall be appointed for terms of two years. Thereafter all appointments shall be for terms of two years. All members shall serve until their successors are appointed. No member shall serve more than two successive two-year terms. Vacancies in the membership of the committee for any cause shall be filled by appointment by the chief executive officer or his or her designee for the unexpired term.

Duties of the committee shall include, but not be limited to, encouraging payment of public and private funds to the Breast and Cervical Cancer Cash Fund, researching and recommending to the department reimbursement limits, planning and implementing outreach and educational programs to Nebraska women, advising the department on its operation of the early detection of breast and cervical cancer grant from the United States Department of Health and Human Services, and encouraging payment of public and private funds to the fund. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1991, LB 256, § 12; Laws 1995, LB 68, § 10; Laws 1995, LB 406, § 84; Laws 1996, LB 1044, § 772; Laws 2007, LB296, § 668; Laws 2008, LB797, § 25.

**71-7013 Immunity from liability; when.**

The State of Nebraska, the department and its employees, and members of the Breast and Cervical Cancer Advisory Committee shall not be liable for any damage or injury resulting from (1) a false negative result or a false positive result interpretation or any other act or omission of an interpreting physician with respect to any screening performed pursuant to sections 71-7001.01 to 71-7012 or (2) any act or omission of a screening supplier or person acting on behalf of such supplier with respect to the provisions of such sections.

**Source:** Laws 1991, LB 256, § 13; Laws 1995, LB 68, § 11; Laws 2008, LB797, § 26.

**ARTICLE 71**

**CRITICAL INCIDENT STRESS MANAGEMENT**

- Section
- 71-7101. Act, how cited.
- 71-7102. Terms, defined.
- 71-7103. Legislative findings.
- 71-7104. Critical Incident Stress Management Program; created; duties.
- 71-7105. Critical Incident Stress Management Council; created; members; duties.
- 71-7106. Interagency Management Committee; created; members; duties.
- 71-7107. Department of Health and Human Services; duties.
- 71-7108. Department of Health and Human Services; Nebraska State Patrol; State Fire Marshal; Nebraska Emergency Management Agency; duties.
- 71-7109. Statewide clinical director; appointment; duties.
- 71-7110. Critical incident stress management region; regional management committee; membership; regional clinical director; duties.
- 71-7111. Statewide critical incident stress management team; members; immunity.
- 71-7112. Confidentiality of information.
- 71-7113. State correctional employees; services provided.

**71-7101 Act, how cited.**

Sections 71-7101 to 71-7113 shall be known and may be cited as the Critical Incident Stress Management Act.

**Source:** Laws 1991, LB 703, § 1; Laws 1993, LB 536, § 107; Laws 1997, LB 184, § 1.

**71-7102 Terms, defined.**

For purposes of the Critical Incident Stress Management Act:

- (1) Committee means the Interagency Management Committee;
- (2) Council means the Critical Incident Stress Management Council;
- (3) Critical incident means a traumatic or crisis situation;
- (4) Critical incident stress means a strong emotional, cognitive, or physical reaction which has the potential to interfere with normal functioning, including physical and emotional illness, loss of interest in the job, personality changes, marital discord, and loss of ability to function;
- (5) Emergency service agency means any law enforcement agency, fire department, emergency medical service, dispatcher, rescue service, hospital as defined in section 71-419, or other entity which provides emergency response services;
- (6) Emergency service personnel includes law enforcement personnel, fire-fighters, emergency medical services personnel, and hospital personnel; and
- (7) Program means the Critical Incident Stress Management Program.

**Source:** Laws 1991, LB 703, § 2; Laws 1997, LB 138, § 53; Laws 1997, LB 184, § 2; Laws 2000, LB 819, § 142.

**71-7103 Legislative findings.**

The Legislature finds that emergency service personnel are potentially placed in a high-risk situation every time they are called upon to respond to an emergency since the extent of the emergency cannot be anticipated and the eventual outcome cannot be predicted. Since the services of emergency service personnel affect the public health, safety, and welfare, the Legislature declares that a critical incident stress management program designed to reduce critical incident stress experienced by such personnel would be in the public interest and would assist such personnel with the demands which occur in their work.

**Source:** Laws 1991, LB 703, § 3; Laws 1997, LB 184, § 3.

**71-7104 Critical Incident Stress Management Program; created; duties.**

There is hereby created the Critical Incident Stress Management Program. The focus of the program shall be to minimize the harmful effects of critical incident stress for emergency service personnel, with a high priority on confidentiality and respect for the individuals involved. The program shall:

- (1) Provide a stress management session to emergency service personnel who appropriately request such assistance in an effort to address critical incident stress;
- (2) Assist in providing the emotional and educational support necessary to ensure optimal functioning of emergency service personnel;

- (3) Conduct preincident educational programs to acquaint emergency service personnel with stress management techniques;
- (4) Promote interagency cooperation; and
- (5) Provide an organized statewide response to the emotional needs of emergency service personnel impacted by critical incidents.

**Source:** Laws 1991, LB 703, § 4; Laws 1997, LB 184, § 4.

**71-7105 Critical Incident Stress Management Council; created; members; duties.**

There is hereby created the Critical Incident Stress Management Council. The council shall be composed of two representatives of the Department of Health and Human Services, the State Fire Marshal, the Superintendent of Law Enforcement and Public Safety, and the Adjutant General as director of the Nebraska Emergency Management Agency. The council shall specify the organizational and operational goals for the program and shall provide overall policy direction for the program.

**Source:** Laws 1991, LB 703, § 5; Laws 1996, LB 1044, § 773; Laws 1997, LB 184, § 5; Laws 2007, LB296, § 669.

**71-7106 Interagency Management Committee; created; members; duties.**

There is hereby created the Interagency Management Committee. Each member of the council shall designate a representative of his or her agency to be a member of the committee. The committee shall be responsible for:

- (1) Planning and budget development;
- (2) Program development and evaluation;
- (3) Coordination of program activities and emergency response;
- (4) Providing a mechanism for quality assurance which may include certification of critical incident stress management team members;
- (5) Identifying critical incident stress management regions;
- (6) Developing regulations and standards;
- (7) Arranging for and supporting training of critical incident stress management teams; and
- (8) Providing backup to regional critical incident stress management teams.

**Source:** Laws 1991, LB 703, § 6; Laws 1997, LB 184, § 6.

**71-7107 Department of Health and Human Services; duties.**

The Department of Health and Human Services shall be the lead agency for the program. The department shall:

- (1) Provide office support to program activities;
- (2) Provide necessary equipment for the program and participants;
- (3) Provide staff support to the council;
- (4) Adopt and promulgate rules and regulations to implement the program;
- (5) Recruit hospital personnel and emergency medical workers to be trained as critical incident stress management peers;
- (6) Participate in the training and continuing education of such peers and mental health professionals; and

(7) Appoint a director for the program who shall be an employee of the department and shall be the chairperson of the committee.

**Source:** Laws 1991, LB 703, § 7; Laws 1996, LB 1044, § 774; Laws 1997, LB 184, § 7; Laws 2007, LB296, § 670.

**71-7108 Department of Health and Human Services; Nebraska State Patrol; State Fire Marshal; Nebraska Emergency Management Agency; duties.**

(1) The Department of Health and Human Services shall participate in the council and committee, recruit mental health workers for each critical incident stress management region, and participate in the training and continuing education activities of critical incident stress management peers and mental health professionals.

(2) The Nebraska State Patrol shall participate in the council and committee, receive all initial requests for stress management sessions, coordinate transportation requirements for critical incident stress management team members, recruit members of the law enforcement profession in each region to be trained as critical incident stress management peers, participate in the training and continuing education activities of critical incident stress management peers and mental health professionals, and appoint a member of the patrol to each regional management committee.

(3) The State Fire Marshal shall participate in the council and committee, cooperate in providing transportation for critical incident stress management teams, recruit firefighters to be trained as critical incident stress management peers in each critical incident stress management region, participate in the training and continuing education activities of critical incident stress management peers and mental health professionals, and appoint an individual who is employed by the State Fire Marshal to be on each regional management committee.

(4) The Nebraska Emergency Management Agency shall participate in the council and committee, promote stress management planning as part of emergency management preparedness, promote preincident education programs to acquaint emergency service personnel with stress management techniques, and participate in the training and continuing education activities of critical incident stress management peers and mental health professionals.

**Source:** Laws 1991, LB 703, § 8; Laws 1996, LB 1044, § 775; Laws 1997, LB 184, § 8.

**71-7109 Statewide clinical director; appointment; duties.**

The council shall appoint a statewide clinical director. The statewide clinical director shall be a member of the committee and, working with the committee, shall supervise and evaluate the professional and peer support team members, including the regional clinical directors. The statewide clinical director may conduct critical incident stress management training and continuing education activities.

**Source:** Laws 1991, LB 703, § 9; Laws 1997, LB 184, § 9.

**71-7110 Critical incident stress management region; regional management committee; membership; regional clinical director; duties.**

Each critical incident stress management region shall have a regional management committee composed of representatives of the Department of Health and Human Services, the State Fire Marshal, and the Nebraska State Patrol and a regional clinical director. The regional clinical director shall have a graduate degree in a mental health discipline. The regional management committee shall be responsible for the implementation and coordination of the program in the region according to the specifications developed by the council and Interagency Management Committee. The regional management committee shall develop critical incident stress management teams to facilitate the stress management process.

**Source:** Laws 1991, LB 703, § 10; Laws 1996, LB 1044, § 776; Laws 1997, LB 184, § 10; Laws 2007, LB296, § 671.

**71-7111 Statewide critical incident stress management team; members; immunity.**

No individual who provides gratuitous assistance to emergency service personnel as a member of the statewide critical incident stress management team in accordance with the Critical Incident Stress Management Act and the rules and regulations shall be held liable for any civil damages as a result of any act of commission or omission arising out of and in the course of rendering such assistance in good faith or any act or failure to act to provide or arrange for mental health treatment or care for emergency service personnel.

**Source:** Laws 1991, LB 703, § 11; Laws 1997, LB 184, § 11.

**71-7112 Confidentiality of information.**

Any information acquired during a stress management session shall be confidential and shall not be disclosed except to the extent necessary to provide assistance pursuant to the stress management session. Information otherwise available from the original source shall not be immune from discovery or use in any civil or criminal action merely because the information was presented during a stress management session if the testimony sought is otherwise permissible and discoverable.

**Source:** Laws 1993, LB 536, § 108; Laws 1997, LB 184, § 12.

**71-7113 State correctional employees; services provided.**

All services available and provided to emergency service personnel under the Critical Incident Stress Management Act shall also be available and provided to state correctional employees for incidents which occur in the course of their duties or at their worksite.

**Source:** Laws 1997, LB 184, § 13.

**ARTICLE 72**

**UNIFORM DETERMINATION OF DEATH ACT**

Section

- 71-7201. Act, how cited.  
71-7202. Determination of death.  
71-7203. Act, how construed.

**71-7201 Act, how cited.**

Sections 71-7201 to 71-7203 shall be known and may be cited as the Uniform Determination of Death Act.

**Source:** Laws 1992, LB 906, § 1.

**71-7202 Determination of death.**

Only an individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

**Source:** Laws 1992, LB 906, § 2.

The Uniform Determination of Death Act does not establish a rule of evidence requiring that in all cases involving an alleged decedent, the fact of death must be medically established. *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009).

The presence of an independent heartbeat and the existence of some brain stem activity means that an infant is alive for purposes of this section. *In re Interest of Tabatha R.*, 252 Neb. 687, 564 N.W.2d 598 (1997).

**71-7203 Act, how construed.**

The Uniform Determination of Death Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

**Source:** Laws 1992, LB 906, § 3.

**ARTICLE 73**

**FIRST RESPONDERS EMERGENCY RESCUE ACT**

Section

- 71-7301. Repealed. Laws 1997, LB 138, § 57.
- 71-7302. Repealed. Laws 1997, LB 138, § 57.
- 71-7303. Repealed. Laws 1997, LB 138, § 57.
- 71-7304. Repealed. Laws 1997, LB 138, § 57.
- 71-7305. Repealed. Laws 1997, LB 138, § 57.
- 71-7306. Repealed. Laws 1997, LB 138, § 57.
- 71-7307. Repealed. Laws 1997, LB 138, § 57.
- 71-7308. Repealed. Laws 1997, LB 138, § 57.
- 71-7309. Repealed. Laws 1997, LB 138, § 57.
- 71-7310. Repealed. Laws 1997, LB 138, § 57.
- 71-7310.01. Repealed. Laws 1997, LB 138, § 57.
- 71-7311. Repealed. Laws 1997, LB 138, § 57.
- 71-7312. Repealed. Laws 1997, LB 138, § 57.
- 71-7313. Repealed. Laws 1997, LB 138, § 57.
- 71-7314. Repealed. Laws 1997, LB 138, § 57.
- 71-7315. Repealed. Laws 1997, LB 138, § 57.
- 71-7316. Repealed. Laws 1997, LB 138, § 57.
- 71-7317. Repealed. Laws 1997, LB 138, § 57.
- 71-7318. Repealed. Laws 1997, LB 138, § 57.

**71-7301 Repealed. Laws 1997, LB 138, § 57.**

**71-7302 Repealed. Laws 1997, LB 138, § 57.**

**71-7303 Repealed. Laws 1997, LB 138, § 57.**

**71-7304 Repealed. Laws 1997, LB 138, § 57.**

**71-7305 Repealed. Laws 1997, LB 138, § 57.**

**71-7306 Repealed. Laws 1997, LB 138, § 57.**



**71-7307 Repealed. Laws 1997, LB 138, § 57.**

**71-7308 Repealed. Laws 1997, LB 138, § 57.**

**71-7309 Repealed. Laws 1997, LB 138, § 57.**

**71-7310 Repealed. Laws 1997, LB 138, § 57.**

**71-7310.01 Repealed. Laws 1997, LB 138, § 57.**

**71-7311 Repealed. Laws 1997, LB 138, § 57.**

**71-7312 Repealed. Laws 1997, LB 138, § 57.**

**71-7313 Repealed. Laws 1997, LB 138, § 57.**

**71-7314 Repealed. Laws 1997, LB 138, § 57.**

**71-7315 Repealed. Laws 1997, LB 138, § 57.**

**71-7316 Repealed. Laws 1997, LB 138, § 57.**

**71-7317 Repealed. Laws 1997, LB 138, § 57.**

**71-7318 Repealed. Laws 1997, LB 138, § 57.**

#### ARTICLE 74

### WHOLESALE DRUG DISTRIBUTOR LICENSING

#### Cross References

**Pharmacy Practice Act**, see section 38-2801.  
**Uniform Controlled Substances Act**, see section 28-401.01.  
**Uniform Credentialing Act**, see section 38-101.  
**Veterinary Drug Distribution Licensing Act**, see section 71-8901.

#### Section

71-7401.	Transferred to section 71-7427.
71-7402.	Transferred to section 71-7428.
71-7403.	Transferred to section 71-7429.
71-7404.	Transferred to section 71-7430.
71-7405.	Transferred to section 71-7431.
71-7406.	Transferred to section 71-7433.
71-7407.	Transferred to section 71-7434.
71-7408.	Transferred to section 71-7435.
71-7409.	Transferred to section 71-7436.
71-7410.	Transferred to section 71-7438.
71-7411.	Transferred to section 71-7441.
71-7412.	Transferred to section 71-7444.
71-7413.	Transferred to section 71-7445.
71-7414.	Repealed. Laws 2006, LB 994, § 161.
71-7415.	Repealed. Laws 2006, LB 994, § 161.
71-7416.	Transferred to section 71-7454.
71-7417.	Transferred to section 71-7447.
71-7418.	Repealed. Laws 2006, LB 994, § 161.
71-7419.	Repealed. Laws 2006, LB 994, § 161.
71-7420.	Transferred to section 71-7451.
71-7421.	Repealed. Laws 2006, LB 994, § 161.
71-7422.	Transferred to section 71-7463.
71-7423.	Transferred to section 71-7457.
71-7424.	Transferred to section 71-7453.
71-7425.	Transferred to section 71-7458.
71-7426.	Transferred to section 71-7459.

**§ 71-7401****PUBLIC HEALTH AND WELFARE**

Section	
71-7427.	Act, how cited.
71-7428.	Definitions, where found.
71-7429.	Blood, defined.
71-7430.	Blood component, defined.
71-7431.	Board, defined.
71-7432.	Chain pharmacy warehouse, defined.
71-7433.	Common control, defined.
71-7434.	Department, defined.
71-7435.	Drug sample, defined.
71-7436.	Emergency medical reasons, defined.
71-7437.	Facility, defined.
71-7438.	Manufacturer, defined.
71-7439.	Normal distribution chain, defined.
71-7440.	Pedigree, defined.
71-7441.	Prescription drug, defined.
71-7442.	Repackage, defined.
71-7443.	Repackager, defined.
71-7444.	Wholesale drug distribution, defined.
71-7445.	Wholesale drug distributor, defined.
71-7446.	Wholesale medical gas distributor, defined.
71-7447.	Wholesale drug distributor; licenses; requirements; exemptions.
71-7448.	License; application; contents; examination; criminal history record information check; waiver.
71-7449.	Designated representative; information required.
71-7450.	Fees.
71-7451.	License; term; renewal.
71-7452.	Bond or other security.
71-7453.	Department; inspections; procedures; fees.
71-7454.	Prescription drugs; restrictions on transfer; exceptions.
71-7455.	Records; pedigree; requirements.
71-7456.	Pedigree; contents.
71-7457.	License; denied, refused renewal, suspended, limited, or revoked; grounds.
71-7458.	Enforcement of act.
71-7459.	Department; fines; when.
71-7460.	Order to cease distribution.
71-7460.01.	Reporting and investigation duties.
71-7460.02.	Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.
71-7460.03.	Insurer; duty to report; contents.
71-7460.04.	Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information.
71-7461.	Unlawful acts.
71-7462.	Violations; penalty.
71-7463.	Rules and regulations.

**71-7401 Transferred to section 71-7427.**

**71-7402 Transferred to section 71-7428.**

**71-7403 Transferred to section 71-7429.**

**71-7404 Transferred to section 71-7430.**

**71-7405 Transferred to section 71-7431.**

**71-7406 Transferred to section 71-7433.**

**71-7407 Transferred to section 71-7434.**

**71-7408 Transferred to section 71-7435.**

- 71-7409** Transferred to section 71-7436.
- 71-7410** Transferred to section 71-7438.
- 71-7411** Transferred to section 71-7441.
- 71-7412** Transferred to section 71-7444.
- 71-7413** Transferred to section 71-7445.
- 71-7414** Repealed. Laws 2006, LB 994, § 161.
- 71-7415** Repealed. Laws 2006, LB 994, § 161.
- 71-7416** Transferred to section 71-7454.
- 71-7417** Transferred to section 71-7447.
- 71-7418** Repealed. Laws 2006, LB 994, § 161.
- 71-7419** Repealed. Laws 2006, LB 994, § 161.
- 71-7420** Transferred to section 71-7451.
- 71-7421** Repealed. Laws 2006, LB 994, § 161.
- 71-7422** Transferred to section 71-7463.
- 71-7423** Transferred to section 71-7457.
- 71-7424** Transferred to section 71-7453.
- 71-7425** Transferred to section 71-7458.
- 71-7426** Transferred to section 71-7459.

**71-7427 Act, how cited.**

Sections 71-7427 to 71-7463 shall be known and may be cited as the Wholesale Drug Distributor Licensing Act.

**Source:** Laws 1992, LB 1019, § 1; R.S.1943, (2003), § 71-7401; Laws 2006, LB 994, § 1; Laws 2007, LB463, § 1293.

**71-7428 Definitions, where found.**

For purposes of the Wholesale Drug Distributor Licensing Act, the definitions found in sections 71-7429 to 71-7446 apply.

**Source:** Laws 1992, LB 1019, § 2; R.S.1943, (2003), § 71-7402; Laws 2006, LB 994, § 2.

**71-7429 Blood, defined.**

Blood means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

**Source:** Laws 1992, LB 1019, § 3; R.S.1943, (2003), § 71-7403; Laws 2006, LB 994, § 3.

**71-7430 Blood component, defined.**

Blood component means that part of blood separated by physical or mechanical means.

**Source:** Laws 1992, LB 1019, § 4; R.S.1943, (2003), § 71-7404; Laws 2006, LB 994, § 4.

**71-7431 Board, defined.**

Board means the Board of Pharmacy.

**Source:** Laws 1992, LB 1019, § 5; Laws 1999, LB 828, § 176; R.S.1943, (2003), § 71-7405; Laws 2006, LB 994, § 5.

**71-7432 Chain pharmacy warehouse, defined.**

Chain pharmacy warehouse means a facility utilized as a central warehouse for intracompany sales or transfers of prescription drugs or devices by two or more pharmacies operating under common ownership or common control.

**Source:** Laws 2006, LB 994, § 6.

**71-7433 Common control, defined.**

Common control means that the power to direct or cause the direction of the management and policies of a person or an organization by ownership of stock or voting rights, by contract, or otherwise is held by the same person or persons.

**Source:** Laws 1992, LB 1019, § 6; R.S.1943, (2003), § 71-7406; Laws 2006, LB 994, § 7.

**71-7434 Department, defined.**

Department means the Department of Health and Human Services.

**Source:** Laws 1992, LB 1019, § 7; Laws 1996, LB 1044, § 778; R.S.1943, (2003), § 71-7407; Laws 2006, LB 994, § 8; Laws 2007, LB296, § 672.

**71-7435 Drug sample, defined.**

Drug sample means a unit of a prescription drug intended to promote the sale of the drug and not intended to be sold.

**Source:** Laws 1992, LB 1019, § 8; R.S.1943, (2003), § 71-7408; Laws 2006, LB 994, § 9.

**71-7436 Emergency medical reasons, defined.**

(1) Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (a) Holders of pharmacy licenses, (b) health care practitioner facilities as defined in section 71-414, and (c) hospitals as defined in section 71-419.

(2) Emergency medical reasons does not include regular and systematic sales to practitioners as defined in section 38-2838 of prescription drugs that will be used for routine office procedures.

**Source:** Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294; Laws 2015, LB37, § 89.

**71-7437 Facility, defined.**

Facility means a physical structure utilized by a wholesale drug distributor for the storage, handling, or repackaging of prescription drugs or the offering of prescription drugs for sale.

**Source:** Laws 2006, LB 994, § 11.

**71-7438 Manufacturer, defined.**

Manufacturer means any entity engaged in manufacturing, preparing, propagating, processing, packaging, repackaging, or labeling a prescription drug.

**Source:** Laws 1992, LB 1019, § 10; R.S.1943, (2003), § 71-7410; Laws 2006, LB 994, § 12; Laws 2007, LB247, § 55.

**71-7439 Normal distribution chain, defined.**

(1) Normal distribution chain means the transfer of a prescription drug or the co-licensed product of the original manufacturer of the finished form of a prescription drug along a chain of custody directly from the manufacturer or co-licensee of such drug to a patient or ultimate consumer of such drug.

(2) Normal distribution chain includes transfers of a prescription drug or co-licensed product:

(a) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, and then to a patient or a patient's agent;

(b) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, to a health care practitioner, health care practitioner facility, or hospital, and then to a patient or a patient's agent;

(c) From a manufacturer or co-licensee to a wholesale drug distributor, to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent;

(d) From a manufacturer or co-licensee to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent; or

(e) Recognized in rules and regulations adopted and promulgated by the department.

(3) For purposes of this section, co-licensed products means prescription drugs that have been approved by the federal Food and Drug Administration and are the subject of an arrangement by which two or more parties have the right to engage in a business activity or occupation concerning such drugs.

**Source:** Laws 2006, LB 994, § 13.

**71-7440 Pedigree, defined.**

Pedigree means a written or electronic documentation of every transfer of a prescription drug as provided in sections 71-7455 and 71-7456.

**Source:** Laws 2006, LB 994, § 14.

**71-7441 Prescription drug, defined.**

Prescription drug means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and

active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, as such section existed on August 1, 2006.

**Source:** Laws 1992, LB 1019, § 11; R.S.1943, (2003), § 71-7411; Laws 2006, LB 994, § 15.

**71-7442 Repackage, defined.**

Repackage means repackaging or otherwise changing the container, wrapper, or labeling of a prescription drug to facilitate the wholesale distribution of such drug.

**Source:** Laws 2006, LB 994, § 16.

**71-7443 Repackager, defined.**

Repackager means a person who repackages.

**Source:** Laws 2006, LB 994, § 17.

**71-7444 Wholesale drug distribution, defined.**

(1) Wholesale drug distribution means the distribution of prescription drugs to a person other than a consumer or patient.

(2) Wholesale drug distribution does not include:

(a) Intracompany sales of prescription drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(b) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or any other governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(c) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities operating under common ownership or common control;

(d) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons or for a practitioner to use for routine office procedures, not to exceed five percent of sales as provided in section 71-7454;

(e) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a prescription drug pursuant to a prescription;

(f) The distribution of drug samples by representatives of a manufacturer or of a wholesale drug distributor;

(g) The sale, purchase, or trade of blood and blood components intended for transfusion; or

(h) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

**Source:** Laws 1992, LB 1019, § 12; Laws 1995, LB 574, § 60; R.S.1943, (2003), § 71-7412; Laws 2006, LB 994, § 18; Laws 2015, LB37, § 90.

**71-7445 Wholesale drug distributor, defined.**

(1) Wholesale drug distributor means any person or entity engaged in wholesale drug distribution in this state, including manufacturers, repackagers, own-label distributors, jobbers, private-label distributors, brokers, warehouses including manufacturer and distributor warehouses, chain pharmacy warehouses, and wholesale drug warehouses, wholesale medical gas distributors, independent wholesale drug traders, and retail pharmacies that engage in wholesale drug distribution in this state.

(2) Wholesale drug distributor does not include a common carrier or other person or entity hired solely to transport prescription drugs if the common carrier, person, or entity does not store, warehouse, or take legal ownership of such drugs.

**Source:** Laws 1992, LB 1019, § 13; R.S.1943, (2003), § 71-7413; Laws 2006, LB 994, § 19.

**71-7446 Wholesale medical gas distributor, defined.**

Wholesale medical gas distributor means any person engaged in the wholesale drug distribution of medical gases provided to suppliers or other entities licensed or otherwise authorized to use, administer, or distribute such gases.

**Source:** Laws 2006, LB 994, § 20.

**71-7447 Wholesale drug distributor; licenses; requirements; exemptions.**

(1) No person or entity may act as a wholesale drug distributor in this state without first obtaining a wholesale drug distributor license from the department. The department shall issue a license to any applicant that satisfies the requirements for licensure under the Wholesale Drug Distributor Licensing Act. Manufacturers are exempt from any licensing and other requirements of the act to the extent not required by federal law or regulation except for those requirements deemed necessary and appropriate under rules and regulations adopted and promulgated by the department.

(2) Wholesale medical gas distributors shall be exempt from any licensing and other requirements of the Wholesale Drug Distributor Licensing Act to the extent not required under federal law but shall be licensed as wholesale drug distributors by the department for the limited purpose of engaging in the wholesale distribution of medical gases upon application to the department, payment of a licensure fee, and inspection of the applicant's facility by the department, except that the applicant may submit and the department may accept an inspection accepted in another state or an inspection conducted by a nationally recognized accreditation program approved by the board. For purposes of such licensure, wholesale medical gas distributors shall only be required to provide information required under subdivisions (1)(a) through (1)(c) of section 71-7448.

(3) The Wholesale Drug Distributor Licensing Act does not apply to:

(a) An agent or employee of a licensed wholesale drug distributor who possesses drug samples when such agent or employee is acting in the usual course of his or her business or employment; or

(b) Any person who (i) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of

medical gases by such person during the immediately preceding calendar year and (ii) has either a pharmacy permit or license or a delegated dispensing permit or is exempt from the practice of pharmacy under subdivision (10) of section 38-2850.

**Source:** Laws 1992, LB 1019, § 17; Laws 1997, LB 752, § 198; Laws 2001, LB 398, § 84; Laws 2003, LB 242, § 148; R.S.1943, (2003), § 71-7417; Laws 2006, LB 994, § 21; Laws 2010, LB849, § 27; Laws 2015, LB37, § 91.

**71-7448 License; application; contents; examination; criminal history record information check; waiver.**

(1) Every applicant for an initial or renewal license as a wholesale drug distributor shall file a written application with the department. The application shall be accompanied by the fee established by the department under section 71-7450 and proof of bond or other security required under section 71-7452 and shall include the following information:

(a) The applicant's name, business address, type of business entity, and telephone number. If the applicant is a partnership, the application shall include the name of each partner and the name of the partnership. If the applicant is a corporation, the application shall include the name and title of each corporate officer and director, all corporate names of the applicant, and the applicant's state of incorporation. If the applicant is a sole proprietorship, the application shall include the name of the sole proprietor and name of the proprietorship;

(b) All trade or business names used by the applicant;

(c) The addresses and telephone numbers of all facilities used by the applicant for the storage, handling, and wholesale distribution of prescription drugs and the names of persons in charge of such facilities. A separate license shall be obtained for each such facility;

(d) A listing of all licenses, permits, or other similar documentation issued to the applicant in any other state authorizing the applicant to purchase or possess prescription drugs;

(e) The names and addresses of the owner and manager of the applicant's wholesale drug distribution facilities, a designated representative at each such facility, and all managerial employees at each such facility; and

(f) Other information as required by the department, including affirmative evidence of the applicant's ability to comply with the Wholesale Drug Distributor Licensing Act and rules and regulations adopted and promulgated under the act.

(2) The department may require persons listed on the application to pass an examination approved by the department on laws pertaining to the wholesale distribution of prescription drugs.

(3) The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be a public record and may only be used by the department for administrative purposes.

(4) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) the member, if the applicant is a limited liability company with only one member, or two of its members, if the applicant is a



limited liability company with two or more members, or (c) two of its officers, if the applicant is a corporation.

(5) The designated representative and the supervisor of the designated representative of a wholesale drug distributor and each owner with greater than a ten percent interest in the wholesale drug distributor, if the wholesale drug distributor is a nonpublicly held company, shall be subject to a criminal history record information check and shall provide the department or the designated agent of the department with a complete set of fingerprints for such purpose if his or her fingerprints are not already on file for such purpose. The department or the designated agent of the department shall forward such fingerprints to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. Such persons shall authorize the release of the results of such criminal history record information check to the department, and the applicant shall pay the actual cost of such fingerprinting and such criminal history record information check.

(6) The department may waive certain requirements under this section upon proof satisfactory to the department that such requirements are duplicative of other requirements of law or regulation and that the granting of such exemption will not endanger the public safety.

**Source:** Laws 2006, LB 994, § 22.

**71-7449 Designated representative; information required.**

Each designated representative named under subdivision (1)(e) of section 71-7448 shall provide the following information prior to the issuance of an initial or renewal license under such section:

(1) The designated representative's places of residence for the immediately preceding seven years;

(2) The designated representative's date and place of birth;

(3) All occupations, positions of employment, and offices held by the designated representative during the immediately preceding seven years and the principal businesses and the addresses of any business, corporation, or other organization in which such occupations, positions, or offices were held;

(4) Whether the designated representative has been, at any time during the immediately preceding seven years, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and its disposition;

(5) Whether the designated representative has been, at any time during the immediately preceding seven years, either temporarily or permanently enjoined by a court of competent jurisdiction from violations of any federal or state law regulating the possession, control, or distribution of prescription drugs, and, if so, the details of such order;

(6) A description of any involvement by the designated representative during the immediately preceding seven years, other than the ownership of stock in a publicly traded company or mutual fund, with any business which manufactured, administered, distributed, or stored prescription drugs and any lawsuits in which such businesses were named as a party;

(7) Whether the designated representative has ever been convicted of any felony and details relating to such conviction; and

(8) A photograph of the designated representative taken within the immediately preceding thirty days.

**Source:** Laws 2006, LB 994, § 23.

**71-7450 Fees.**

(1) Licensure activities under the Wholesale Drug Distributor Licensing Act shall be funded by license fees. An applicant for an initial or renewal license under the act shall pay a license fee as provided in this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints, other similar direct and indirect costs, and other relevant factors as determined by the department.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect a fee for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of wholesale drug distributors, except for the transfer of funds provided for under subsection (6) of this section.

(6) The State Treasurer shall transfer three million seven hundred thousand dollars from the Health and Human Services Cash Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. It is the intent of the Legislature that the transfer to the General Fund in this subsection be from funds credited to the Wholesale Drug Distributor Licensing subfund of the Health and Human Services Cash Fund.

**Source:** Laws 2006, LB 994, § 24; Laws 2007, LB296, § 673; Laws 2017, LB331, § 37.

**71-7451 License; term; renewal.**

A wholesale drug distributor license shall expire on July 1 of each year and may be renewed. The license shall not be transferable. The department shall mail an application for renewal to each licensee not later than June 1 of each year. If an application for renewal is received from the licensee after July 1, the department may impose a late fee and shall refuse to issue the license until such late fee and renewal fee are paid. Failure to receive an application for renewal shall not relieve the licensee from the late fee imposed by this section.

**Source:** Laws 1992, LB 1019, § 20; Laws 2001, LB 398, § 85; Laws 2003, LB 242, § 150; R.S.1943, (2003), § 71-7420; Laws 2006, LB 994, § 25.

**71-7452 Bond or other security.**

An applicant for an initial or renewal license as a wholesale drug distributor shall submit to the department proof of a bond of not less than one hundred thousand dollars or other equivalent means of security acceptable to the department. The bond or other security shall be given for the purpose of securing payment of any fines or other penalties imposed by the department and any fees or costs incurred by the department relating to such applicant as authorized under the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act which remain unpaid by the applicant within thirty days after such fines, penalties, and costs become final. The department may make a claim against such bond or security until one year after the expiration of the license issued to the applicant under the act.

**Source:** Laws 2006, LB 994, § 26.

**71-7453 Department; inspections; procedures; fees.**

(1) Each wholesale drug distributor doing business in this state shall be inspected by the department or a nationally recognized accreditation program that is approved by the board and that is acting on behalf of the department prior to the issuance of an initial or renewal license by the department under section 71-7448.

(2) The department or such nationally recognized accreditation program may provide for the inspection of any wholesale drug distributor licensed to engage in wholesale drug distribution in this state in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. As part of any such inspection, the department may require an analysis of suspected prescription drugs to determine authenticity.

(3) The department may accept an inspection accepted in another state in lieu of an inspection by the department or a nationally recognized accreditation program under this section.

(4) The department or such nationally recognized accreditation program may charge and collect fees for inspection activities conducted under this section.

(5) In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a wholesale drug distributor with the Wholesale Drug Distributor Licensing Act and the rules and regulations adopted and promulgated under the act.

**Source:** Laws 1992, LB 1019, § 24; R.S.1943, (2003), § 71-7424; Laws 2006, LB 994, § 27.

**71-7454 Prescription drugs; restrictions on transfer; exceptions.**

(1) No wholesale drug distributor, manufacturer, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed under the Wholesale Drug Distributor Licensing Act except transfers for emergency medical reasons and except as provided in subsection (3) of section 71-2449, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy license or practitioner as defined in section 38-2838 during the immediately preceding calendar year, and except as otherwise provided in the act.

(2) A wholesale drug distributor may receive returns or exchanges of prescription drugs from a pharmacy, chain pharmacy warehouse, health care practitioner facility as defined in section 71-414, or hospital as defined in section 71-419 pursuant to the terms and conditions agreed upon between such wholesale drug distributor and such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital. Such returns and exchanges shall not be subject to sections 71-7455 to 71-7457. A wholesale drug distributor shall not receive from a pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital an amount or quantity of a prescription drug greater than the amount or quantity that was originally sold by the wholesale drug distributor to such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital.

(3) A manufacturer or wholesale drug distributor shall furnish prescription drugs only to persons licensed by the department and shall verify such licensure before furnishing prescription drugs to a person not known to the manufacturer or wholesale drug distributor.

(4) Prescription drugs furnished by a manufacturer or wholesale drug distributor shall be delivered only to the premises listed on the license, except that a manufacturer or wholesale drug distributor may furnish prescription drugs to a person licensed by the department or his or her agent at the premises of the manufacturer or wholesale drug distributor if:

- (a) The identity and authorization of the recipient is properly established; and
- (b) This method of receipt is employed only to meet the prescription drug needs of a particular patient of the person licensed by the department.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area. Receipt of such drugs shall be acknowledged by written receipt signed by a pharmacist or other authorized personnel. The receipt shall contain the time of delivery and the type and quantity of the prescription drug received. Any discrepancy between the signed receipt and the type and quantity of prescription drug actually received shall be reported by the receiving authorized pharmacy personnel to the delivering manufacturer or wholesale drug distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale drug distributor shall only accept payment or allow the use of credit to establish an account for the purchase of prescription drugs from the owner or owners of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs shall bear the name of such licensee.

**Source:** Laws 1992, LB 1019, § 16; Laws 1998, LB 1073, § 158; Laws 2001, LB 398, § 83; R.S.1943, (2003), § 71-7416; Laws 2006, LB 994, § 28; Laws 2007, LB463, § 1295; Laws 2008, LB308, § 13.

#### **71-7455 Records; pedigree; requirements.**

(1) A wholesale drug distributor engaged in the wholesale distribution of prescription drugs in this state shall establish and maintain accurate records of all transactions regarding the receipt and distribution or other disposition of prescription drugs as provided in this section.

(2) The department shall adopt and promulgate rules and regulations to require that all prescription drugs that leave the normal distribution chain be

accompanied by a paper or electronic pedigree as provided in section 71-7456. Such rules and regulations shall be adopted and promulgated no later than July 1, 2007.

(3) The department shall develop standards and requirements for electronic pedigrees in order to effectively authenticate, track, and trace prescription drugs. Prior to the development of such standards and requirements, the department shall consult with the federal Food and Drug Administration, manufacturers, wholesale drug distributors, pharmacies, and other interested parties regarding the feasibility and the ways, means, and practicality of requiring that all prescription drugs that leave the normal distribution chain be accompanied by an electronic pedigree. The standards and requirements may prescribe the information required to be included as part of the electronic pedigree. Such standards and requirements shall be developed no later than July 1, 2008. All prescription drugs that leave the normal distribution chain shall not be required to be accompanied solely by an electronic pedigree prior to such date.

(4) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in the wholesale distribution of prescription drugs in this state.

(5) A wholesale drug distributor, other than the original manufacturer of the finished form of the prescription drug, shall verify all transactions listed on the pedigree before attempting to further distribute such drug.

**Source:** Laws 2006, LB 994, § 29.

**71-7456 Pedigree; contents.**

(1) The pedigree required under section 71-7455 shall include all necessary identifying information concerning each sale or other transfer in the chain of distribution of the prescription drug from the manufacturer, through acquisition and sale by any wholesale drug distributor or repackager, until final sale to a pharmacy or other person dispensing or administering such drug, including, but not limited to:

- (a) Name of the prescription drug;
- (b) Dosage form and strength of the prescription drug;
- (c) Size of the container;
- (d) Number of containers;
- (e) Lot number of the prescription drug;
- (f) Name of the original manufacturer of the finished dosage form of the prescription drug;
- (g) Name, address, telephone number, and if available, the email address of each owner of the prescription drug and each wholesale drug distributor who does not take title to the prescription drug;
- (h) Name and address of each location from which the prescription drug was shipped if different from the owner's;
- (i) Transaction dates;
- (j) Certification that each recipient has authenticated the pedigree;
- (k) Name of any repackager, if applicable; and
- (l) Name and address of person certifying the delivery.

(2) Each paper or electronic pedigree shall be maintained by the purchaser and the wholesale drug distributor for three years from the date of sale or transfer and available for inspection or use upon request of law enforcement or an authorized agent of the department.

**Source:** Laws 2006, LB 994, § 30.

**71-7457 License; denied, refused renewal, suspended, limited, or revoked; grounds.**

(1) A wholesale drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the department when the department finds that the applicant or licensee has violated any provisions of the Wholesale Drug Distributor Licensing Act or of the rules and regulations adopted and promulgated under the act or has committed any acts or offenses set forth in section 38-178, 38-179, or 71-7459. All actions and proceedings shall be carried out as specified in sections 38-177 to 38-1,115.

(2) For purposes of this section, applicant or licensee includes, but is not limited to, the board of directors, chief executive officer, and other officers of the applicant or the entity to which the license is issued and the manager of each site if more than one site is located in this state.

**Source:** Laws 1992, LB 1019, § 23; Laws 1994, LB 1223, § 79; Laws 1996, LB 1044, § 779; R.S.1943, (2003), § 71-7423; Laws 2006, LB 994, § 31; Laws 2007, LB296, § 674; Laws 2007, LB463, § 1296.

**71-7458 Enforcement of act.**

The department, the Attorney General, or any county attorney may institute an action in the name of the state for an injunction or other process against any person to restrain or prevent any violation of the Wholesale Drug Distributor Licensing Act or any rules and regulations adopted and promulgated under the act.

**Source:** Laws 1992, LB 1019, § 25; R.S.1943, (2003), § 71-7425; Laws 2006, LB 994, § 32.

**71-7459 Department; fines; when.**

(1) The department, upon issuance of a final disciplinary action against a person who violates any provision of section 71-7454, shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person, not to exceed ten thousand dollars.

(2) The department, upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-7453, shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand dollars times the number of such disciplinary actions, not to exceed ten thousand dollars. All fines collected under this section shall be remitted to the State

Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1992, LB 1019, § 26; R.S.1943, (2003), § 71-7426; Laws 2006, LB 994, § 33.

**71-7460 Order to cease distribution.**

(1) If the department finds there is a reasonable probability that (a) a wholesale drug distributor has falsified a pedigree or has sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use and (b) such drug could cause serious, adverse health consequences or death, the department shall issue an order to immediately cease distribution of such drug.

(2) Persons subjected to any order issued by the department under this section shall be provided with notice and an opportunity for an informal hearing to be held not later than ten days after the date the order was issued. If the department determines, after such hearing, that inadequate grounds exist to support the actions required by the order, the department shall vacate the order.

**Source:** Laws 2006, LB 994, § 34.

**71-7460.01 Reporting and investigation duties.**

Every wholesale drug distributor licensed under the Wholesale Drug Distributor Licensing Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

**Source:** Laws 2007, LB463, § 1297.

**71-7460.02 Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.**

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Wholesale Drug Distributor Licensing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or

other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

**Source:** Laws 2007, LB463, § 1298; Laws 2011, LB431, § 15.

#### Cross References

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

**Health Care Quality Improvement Act**, see section 71-7904.

**Nebraska Hospital-Medical Liability Act**, see section 44-2855.

**Patient Safety Improvement Act**, see section 71-8701.

#### **71-7460.03 Insurer; duty to report; contents.**

(1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Wholesale Drug Distributor Licensing Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

**Source:** Laws 2007, LB463, § 1299.

#### **71-7460.04 Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information.**

The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Wholesale Drug Distributor Licensing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of



professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

**Source:** Laws 2007, LB463, § 1300.

#### **71-7461 Unlawful acts.**

It is unlawful for any person to commit or to permit, cause, aid, or abet the commission of any of the following acts in this state:

(1) Any violation of the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act;

(2) Providing the department, any of its representatives, or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter under the act;

(3) Obtaining or attempting to obtain a prescription drug by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of a prescription drug;

(4) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the manufacture, repackaging, sale, transfer, delivery, holding, or offering for sale of any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or otherwise rendered unfit for distribution;

(5) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the adulteration, misbranding, or counterfeiting of any prescription drug;

(6) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for pay or otherwise; and

(7) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

**Source:** Laws 2006, LB 994, § 35.

#### **71-7462 Violations; penalty.**

Any person who knowingly and intentionally engages in wholesale drug distribution in this state in violation of the Wholesale Drug Distributor Licensing Act is guilty of a Class III felony.

**Source:** Laws 2006, LB 994, § 36.

#### **71-7463 Rules and regulations.**

The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Wholesale Drug Distributor Licensing Act.

**Source:** Laws 1992, LB 1019, § 22; R.S.1943, (2003), § 71-7422; Laws 2006, LB 994, § 37.

## ARTICLE 75

### COMMUNITY HEALTH CARE

#### Section

71-7501.	Repealed. Laws 2001, LB 209, § 36.
71-7502.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7502.01.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7503.	Repealed. Laws 2001, LB 209, § 36.
71-7504.	Repealed. Laws 2001, LB 209, § 36.
71-7505.	Repealed. Laws 2001, LB 209, § 36.
71-7506.	Repealed. Laws 2001, LB 209, § 36.
71-7507.	Repealed. Laws 2001, LB 209, § 36.
71-7508.	Repealed. Laws 2001, LB 209, § 36.
71-7509.	Repealed. Laws 2001, LB 209, § 36.
71-7510.	Repealed. Laws 2001, LB 209, § 36.
71-7511.	Repealed. Laws 2001, LB 209, § 36.
71-7512.	Repealed. Laws 2001, LB 209, § 36.
71-7513.	Repealed. Laws 2001, LB 209, § 36.
71-7514.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7515.	Repealed. Laws 2001, LB 209, § 36.
71-7516.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7517.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.	Repealed. Laws 1994, LB 1223, § 135.
71-7518.01.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.02.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.03.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.04.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.05.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.06.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.07.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.08.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.09.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7519.	Repealed. Laws 1994, LB 1223, § 135.
71-7520.	Repealed. Laws 2001, LB 209, § 36.
71-7521.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7522.	Repealed. Laws 2001, LB 209, § 36.
71-7523.	Repealed. Laws 2001, LB 209, § 36.
71-7524.	Repealed. Laws 2001, LB 209, § 36.
71-7525.	Repealed. Laws 2001, LB 209, § 36.
71-7526.	Repealed. Laws 2001, LB 209, § 36.
71-7527.	Repealed. Laws 2001, LB 209, § 36.
71-7528.	Repealed. Laws 2001, LB 209, § 36.
71-7529.	Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

**71-7501 Repealed. Laws 2001, LB 209, § 36.**

**71-7502 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.**

**71-7502.01 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.**

**71-7503 Repealed. Laws 2001, LB 209, § 36.**

**71-7504 Repealed. Laws 2001, LB 209, § 36.**

- 71-7505 Repealed. Laws 2001, LB 209, § 36.
- 71-7506 Repealed. Laws 2001, LB 209, § 36.
- 71-7507 Repealed. Laws 2001, LB 209, § 36.
- 71-7508 Repealed. Laws 2001, LB 209, § 36.
- 71-7509 Repealed. Laws 2001, LB 209, § 36.
- 71-7510 Repealed. Laws 2001, LB 209, § 36.
- 71-7511 Repealed. Laws 2001, LB 209, § 36.
- 71-7512 Repealed. Laws 2001, LB 209, § 36.
- 71-7513 Repealed. Laws 2001, LB 209, § 36.
- 71-7514 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7515 Repealed. Laws 2001, LB 209, § 36.
- 71-7516 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7517 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518 Repealed. Laws 1994, LB 1223, § 135.
- 71-7518.01 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.02 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.03 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.04 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.05 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.06 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.07 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.08 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7518.09 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7519 Repealed. Laws 1994, LB 1223, § 135.
- 71-7520 Repealed. Laws 2001, LB 209, § 36.
- 71-7521 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
- 71-7522 Repealed. Laws 2001, LB 209, § 36.
- 71-7523 Repealed. Laws 2001, LB 209, § 36.
- 71-7524 Repealed. Laws 2001, LB 209, § 36.
- 71-7525 Repealed. Laws 2001, LB 209, § 36.
- 71-7526 Repealed. Laws 2001, LB 209, § 36.

**71-7527 Repealed. Laws 2001, LB 209, § 36.**

**71-7528 Repealed. Laws 2001, LB 209, § 36.**

**71-7529 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.**

## ARTICLE 76

### HEALTH CARE

#### (a) HEALTH CARE ACCESS AND REFORM

##### Section

- 71-7601. Repealed. Laws 2008, LB 480, § 5.
- 71-7602. Repealed. Laws 2008, LB 480, § 5.
- 71-7603. Repealed. Laws 2008, LB 480, § 5.
- 71-7604. Repealed. Laws 2008, LB 480, § 5.

#### (b) NEBRASKA HEALTH CARE FUNDING ACT

- 71-7605. Act, how cited.
- 71-7606. Purpose of act; restrictions on use of funds; report.
- 71-7606.01. Repealed. Laws 2001, LB 692, § 29.
- 71-7607. Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment.
- 71-7608. Nebraska Tobacco Settlement Trust Fund; created; use; investment.
- 71-7609. Repealed. Laws 2008, LB 480, § 5.
- 71-7610. Repealed. Laws 2008, LB 480, § 5.
- 71-7611. Nebraska Health Care Cash Fund; created; use; investment; report.
- 71-7611.01. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.02. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.03. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.04. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.05. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.06. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.07. Repealed. Laws 2003, LB 412, § 12.
- 71-7611.08. Repealed. Laws 2003, LB 412, § 12.
- 71-7612. Repealed. Laws 2000, LB 1427, § 12.
- 71-7613. Repealed. Laws 2001, LB 692, § 29.
- 71-7614. Repealed. Laws 2008, LB 480, § 5.

#### (c) NATIVE AMERICAN PUBLIC HEALTH ACT

- 71-7615. Act, how cited.
- 71-7616. Legislative findings.
- 71-7617. Contracts to provide educational and public health services; Department of Health and Human Services; duties.
- 71-7618. Funding of contracts; priority.
- 71-7619. Aid to tribal councils.
- 71-7620. Recipients; reports.
- 71-7621. Recapture of funds.
- 71-7622. Rules and regulations.

#### (a) HEALTH CARE ACCESS AND REFORM

**71-7601 Repealed. Laws 2008, LB 480, § 5.**

**71-7602 Repealed. Laws 2008, LB 480, § 5.**

**71-7603 Repealed. Laws 2008, LB 480, § 5.**

**71-7604 Repealed. Laws 2008, LB 480, § 5.**

## (b) NEBRASKA HEALTH CARE FUNDING ACT

**71-7605 Act, how cited.**

Sections 71-7605 to 71-7611 shall be known and may be cited as the Nebraska Health Care Funding Act.

**Source:** Laws 1998, LB 1070, § 1; Laws 1999, LB 324, § 1; Laws 2000, LB 1427, § 2; Laws 2001, LB 692, § 13; Laws 2002, LB 1148, § 2; Laws 2008, LB480, § 1.

**71-7606 Purpose of act; restrictions on use of funds; report.**

(1) The purpose of the Nebraska Health Care Funding Act is to provide for the use of dedicated revenue for health-care-related expenditures and administration and enforcement of the Master Settlement Agreement as defined in section 69-2702.

(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.

(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.

(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1998, LB 1070, § 2; Laws 2000, LB 1427, § 3; Laws 2001, LB 692, § 14; Laws 2003, LB 412, § 4; Laws 2007, LB296, § 676; Laws 2008, LB469, § 1; Laws 2011, LB590, § 18; Laws 2012, LB782, § 124.

**71-7606.01 Repealed. Laws 2001, LB 692, § 29.****71-7607 Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment.**

(1) The Nebraska Medicaid Intergovernmental Trust Fund is created. The fund shall include revenue received from governmental nursing facilities receiving payments for nursing facility services under the medical assistance program established pursuant to the Medical Assistance Act. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. The department shall adopt and promulgate rules and regulations to establish procedures for participation by governmental nursing facilities and for the receipt of such revenue under this section. Money from the Nebraska Medicaid Intergovernmental Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611.

(2) The department may use revenue in the Nebraska Medicaid Intergovernmental Trust Fund to offset any unanticipated reductions in medicaid funds received under this section.

(3) Any money in the Nebraska Medicaid Intergovernmental Trust 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 1998, LB 1070, § 3; Laws 2000, LB 1427, § 5; Laws 2001, LB 541, § 4; Laws 2001, LB 692, § 15; Laws 2001, Spec. Sess., LB 3, § 3; Laws 2003, LB 412, § 5; Laws 2004, LB 1091, § 5; Laws 2006, LB 1061, § 10; Laws 2006, LB 1248, § 79; Laws 2007, LB296, § 677.

Cross References

**Medical Assistance Act**, see section 68-901.

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

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

**71-7608 Nebraska Tobacco Settlement Trust Fund; created; use; investment.**

The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation to which the State of Nebraska is a party. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611. Any money in the Nebraska Tobacco Settlement Trust 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 1998, LB 1070, § 4; Laws 1999, LB 324, § 3; Laws 2000, LB 1427, § 6; Laws 2000, LB 1436, § 1; Laws 2001, LB 692, § 16; Laws 2003, LB 412, § 6; Laws 2004, LB 1091, § 6; Laws 2007, LB296, § 678; Laws 2008, LB606, § 7; Laws 2008, LB928, § 32; Laws 2008, LB961, § 4; Laws 2009, LB316, § 18.

Cross References

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

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

**71-7609 Repealed. Laws 2008, LB 480, § 5.**

**71-7610 Repealed. Laws 2008, LB 480, § 5.**

**71-7611 Nebraska Health Care Cash Fund; created; use; investment; report.**

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) sixty million three hundred thousand dollars on or before July 15, 2014, (b) sixty million three hundred fifty thousand dollars on or before July 15, 2015, (c) sixty million three hundred fifty thousand dollars on or before July 15, 2016, (d) sixty million seven hundred thousand dollars on or before July 15, 2017, (e) five hundred thousand dollars on or before May 15, 2018, (f) sixty-one million six hundred thousand dollars on or before July 15, 2018, (g) sixty-one million three hundred fifty thousand dollars on or before July 15, 2019, and (h) sixty million four hundred fifty thousand dollars on or before every July 15 thereafter from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. The state investment officer shall advise the State Treasurer on the

amounts to be transferred first from the Nebraska Medicaid Intergovernmental Trust Fund until the fund balance is depleted and from the Nebraska Tobacco Settlement Trust Fund thereafter in order to sustain such transfers in perpetuity. The state investment officer shall report electronically to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. The Nebraska Health Care Cash Fund shall also include money received pursuant to section 77-2602. Except as otherwise provided by law, no more than the amounts specified in this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

The State Treasurer shall transfer ten million dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on June 28, 2018, and June 28, 2019.

It is the intent of the Legislature that no additional programs are funded through the Nebraska Health Care Cash Fund until funding for all programs with an appropriation from the fund during FY2012-13 are restored to their FY2012-13 levels.

(2) Any money in the Nebraska Health Care 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.

(3) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

(4) The State Treasurer shall transfer fifty thousand dollars on or before July 15, 2016, from the Nebraska Health Care Cash Fund to the Board of Regents of the University of Nebraska for the University of Nebraska Medical Center. It is the intent of the Legislature that these funds be used by the College of Public Health for workforce training.

(5) It is the intent of the Legislature that the cost of the staff and operating costs necessary to carry out the changes made by Laws 2018, LB439, and not covered by fees or federal funds shall be funded from the Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

**Source:** Laws 1998, LB 1070, § 7; Laws 2000, LB 1427, § 9; Laws 2001, LB 692, § 18; Laws 2003, LB 412, § 8; Laws 2004, LB 1091, § 7; Laws 2005, LB 426, § 12; Laws 2007, LB322, § 19; Laws 2007, LB482, § 6; Laws 2008, LB480, § 2; Laws 2008, LB830, § 9; Laws 2008, LB961, § 5; Laws 2009, LB27, § 7; Laws 2009, LB316, § 19; Laws 2012, LB782, § 125; Laws 2012, LB969, § 9; Laws 2013, LB199, § 29; Laws 2014, LB906, § 18; Laws 2015, LB390, § 12; Laws 2015, LB661, § 32; Laws 2017, LB331, § 38; Laws 2018, LB439, § 9; Laws 2018, LB793, § 10; Laws 2018, LB945, § 17.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB439, section 9, with LB793, section 10, and LB945, section 17, to reflect all amendments.

**Note:** Changes made by LB945 became effective April 5, 2018. Changes made by LB793 became operative April 24, 2018. Changes made by LB439 became effective July 19, 2018.

#### Cross References

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

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

**71-7611.01 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.02 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.03 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.04 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.05 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.06 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.07 Repealed. Laws 2003, LB 412, § 12.**

**71-7611.08 Repealed. Laws 2003, LB 412, § 12.**

**71-7612 Repealed. Laws 2000, LB 1427, § 12.**

**71-7613 Repealed. Laws 2001, LB 692, § 29.**

**71-7614 Repealed. Laws 2008, LB 480, § 5.**

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

**71-7615 Act, how cited.**

Sections 71-7615 to 71-7622 shall be known and may be cited as the Native American Public Health Act.

**Source:** Laws 1998, LB 1070, § 11.

**71-7616 Legislative findings.**

The Legislature finds that members of Nebraska's federally recognized Native American tribes are not receiving adequate basic public health services, especially in the areas of education and prevention. The leading causes of death among Native American people are largely preventable. Many Native American people suffer from preventable diseases such as diabetes, cardiovascular disease, and alcohol-related fatalities. An alarming number of tribal members engage in health-threatening activities such as smoking, substance abuse, and poor diet. Births to teenaged Native Americans are higher than any other racial group. Unintentional injuries are costing Native American people years of productivity and potential. As a result, the life expectancy among Native Americans is low while the infant mortality rate is high when compared to Nebraska's general population. The problems and future costs associated with a lack of adequate public health services will continue to escalate as seventy percent of tribal members on reservations and in service areas are children.

To protect a generation of Native American children and to provide for a safe, healthy future for future generations of Native American people, the Legislature declares that public health infrastructure focusing on health education and preventative health measures for Native Americans must be addressed.

**Source:** Laws 1998, LB 1070, § 12.

**71-7617 Contracts to provide educational and public health services; Department of Health and Human Services; duties.**

The Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes, Indian health



organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services targeted to Native American populations. The following educational and public health services may be considered by the department for such contracts:

- (1) Identification and enrollment of children in state and federal programs providing access to health insurance or health care;
- (2) Efforts to educate children and adults about the health risks associated with smoking and tobacco use, alcohol abuse, and other substances that threaten health and well-being and other activities designed to reduce the rate of substance abuse;
- (3) Prenatal care education for women and notification of programs that improve prenatal care;
- (4) Education focusing on proper diet and the importance of physical activity to good health;
- (5) Blood pressure and cholesterol screenings;
- (6) Support of efforts to identify children and adults at risk for depression and other mental health conditions and provide mental health counseling to prevent suicide;
- (7) Parenting classes and the promotion of such programs;
- (8) Efforts to discourage drinking and driving and to encourage the use of seat belts;
- (9) Tests and education for acquired immunodeficiency syndrome and other sexually transmitted diseases;
- (10) Tests for pregnancy and referrals to prenatal care when directed;
- (11) Educational efforts aimed at reducing teen pregnancies and other unintended pregnancies;
- (12) Case management for pregnant women, children, or adults with special health care needs;
- (13) Efforts to make health care prevention services more affordable or accessible;
- (14) Matching funds for state and federal programs designed to address public health needs;
- (15) Staffing needs for public health services or education including the recruitment and training of Native American providers;
- (16) Cervical and breast cancer detection services and other prevention components of comprehensive women's health services;
- (17) Education to prevent and reduce the occurrence of diabetes; and
- (18) Other prevention or educational activities or programs that address the health, safety, or self-sufficiency of Native American persons.

**Source:** Laws 1998, LB 1070, § 13; Laws 2005, LB 301, § 57; Laws 2007, LB296, § 680.

**71-7618 Funding of contracts; priority.**

During each fiscal year, the Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes as approved by the tribal councils, Indian health organizations,

or other public health organizations that have a substantial Native American clientele to provide educational and public health services pursuant to section 71-7617. The department shall fund all eligible contracts until the appropriation to this program is depleted, but shall give priority to contracts which meet the following criteria:

- (1) Programs or activities that directly impact the health and well-being of children;
- (2) Programs or activities which serve the greater number of people over the longest period of time;
- (3) Programs or activities that are part of a larger plan for strategic public health planning and implementation;
- (4) Current programs or activities that have demonstrated success in improving public health or new programs or activities modeled on successful programs and activities; and
- (5) Programs or activities that focus on primary prevention and show promise in reducing future health care expenditures.

**Source:** Laws 1998, LB 1070, § 14; Laws 2005, LB 301, § 58; Laws 2007, LB296, § 681.

#### **71-7619 Aid to tribal councils.**

The Department of Health and Human Services shall provide technical assistance and assessment of needs evaluations upon request to aid tribal councils in the development of contract proposals.

**Source:** Laws 1998, LB 1070, § 15; Laws 2005, LB 301, § 59; Laws 2007, LB296, § 682.

#### **71-7620 Recipients; reports.**

The recipients of funds under the Native American Public Health Act shall submit a report on the activities funded each fiscal year. The report shall provide information as required by the Department of Health and Human Services to determine the effectiveness of the contract in meeting the goals of the Native American Public Health Act.

**Source:** Laws 1998, LB 1070, § 16; Laws 2005, LB 301, § 60; Laws 2007, LB296, § 683.

#### **71-7621 Recapture of funds.**

If the Department of Health and Human Services determines that services are not being delivered in accordance with the contract, the department may seek to recapture all or a portion of funds expended.

**Source:** Laws 1998, LB 1070, § 17; Laws 2005, LB 301, § 61; Laws 2007, LB296, § 684.

#### **71-7622 Rules and regulations.**

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Native American Public Health Act and

shall adhere to already established or adopted and promulgated rules and regulations for contracted services under the act.

**Source:** Laws 1998, LB 1070, § 18; Laws 2005, LB 301, § 62; Laws 2007, LB296, § 685.

## ARTICLE 77

### HEALTH CARE FACILITY-PROVIDER COOPERATION

#### Cross References

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

**Nebraska Health Care Certificate of Need Act**, see section 71-5801.

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

#### Section

- 71-7701. Act, how cited.
- 71-7702. Terms, defined.
- 71-7703. Certificate of public advantage; governing cooperative agreement; application.
- 71-7704. Certificate of public advantage; notice; review; hearing; rules and regulations.
- 71-7705. Certificate of public advantage; decision; execute cooperative agreement; when; contest of decision; appeal.
- 71-7706. Certificate of public advantage; issuance; considerations.
- 71-7707. Certificate of public advantage; termination.
- 71-7708. Parties to agreement; report; petition to terminate certificate; adverse job actions prohibited.
- 71-7709. Parties and participants; immunity; notice; act, how construed.
- 71-7710. Act; how construed.
- 71-7711. Department; maintain copies of agreements; notice of termination, filing required.

#### **71-7701 Act, how cited.**

Sections 71-7701 to 71-7711 shall be known and may be cited as the Health Care Facility-Provider Cooperation Act.

**Source:** Laws 1994, LB 1223, § 111.

#### **71-7702 Terms, defined.**

For purposes of the Health Care Facility-Provider Cooperation Act:

(1) Community planning means a plan which identifies (a) health-care-related resources, facilities, and services within the community, (b) the health care needs of the community, (c) gaps in services, (d) duplication of services, and (e) ways to meet health care needs;

(2) Cooperative agreement means an agreement among two or more health care facilities or other providers for the sharing, allocation, or referral of patients, personnel, instructional programs, equipment, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered or purchased by health care facilities or other providers;

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

(4) Health care facility means:

(a) Any facility required to be licensed under the Health Care Facility Licensure Act or, if in another state, licensed in such state; and

(b) Any parent of a health care facility, health care facility subsidiary, or health care facility affiliate that provides medical or medically related diagnos-

tic and laboratory services or engages in ancillary activities supporting those services; and

(5) Provider means any person licensed to provide health care services under the Uniform Credentialing Act and engaged in the practice of medicine and surgery, osteopathic medicine, pharmacy, optometry, podiatry, physical therapy, or nursing.

**Source:** Laws 1994, LB 1223, § 112; Laws 1996, LB 1044, § 786; Laws 2000, LB 819, § 144; Laws 2007, LB296, § 686; Laws 2007, LB463, § 1301.

Cross References

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

Uniform Credentialing Act, see section 38-101.

**71-7703 Certificate of public advantage; governing cooperative agreement; application.**

Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the cooperative agreement. The application shall include an executed letter of intent signed by the parties indicating the parties' intent to proceed with a cooperative agreement if the department issues a certificate of public advantage and shall also include a narrative description of the proposed agreement, the nature and scope of the cooperation in the proposed agreement, and any consideration passing to any party under the proposed agreement. A copy of the application and copies of all additional related materials shall be submitted to the Attorney General and to the department at the same time.

**Source:** Laws 1994, LB 1223, § 113.

**71-7704 Certificate of public advantage; notice; review; hearing; rules and regulations.**

(1) Within five working days after receipt of an application for a certificate of public advantage, the department shall publish notice of the application through public channels and shall notify health care facilities providing similar services in the area affected by the proposal and any person who has requested such notice. The notice shall state that an application has been received, describe the proposal, and state the date by which a person may submit written comments about the application to the department.

(2) The department shall, within fifteen days after the date an application is received, determine if the application is complete for the purposes of review. The department may find that an application is incomplete when a question on the application form has not been answered in whole or in part or has been answered in a manner that does not fairly meet the question addressed or when the application does not include attachments of supporting documents necessary to complete the answer. If the department determines that an application is incomplete, it shall notify the applicant within fifteen days after the date the application was received, stating the reasons for its determination of incompleteness with reference to the particular questions for which a deficiency is noted.

(3) The department may, during the course of its review, hold a public meeting at which any person may introduce testimony and exhibits in connection with an application. The department decision to hold a public meeting

shall be made within fifteen days after the department's dissemination of notice pursuant to subsection (1) of this section. The meeting shall be held no later than thirty days after the department's decision to hold a public meeting and upon five days' notice, not including days the application is deemed to be incomplete.

(4) The department shall review the application in accordance with the standards set forth in section 71-7706 and may hold a public hearing in accordance with rules and regulations of the department. Persons may intervene if any legal rights, duties, privileges, or other legal interests may be substantially affected by the application. The department may adopt and promulgate rules and regulations for such intervention. The department shall consult with the Attorney General regarding his or her evaluation of any potential reduction in competition resulting from a cooperative agreement.

**Source:** Laws 1994, LB 1223, § 114.

**71-7705 Certificate of public advantage; decision; execute cooperative agreement; when; contest of decision; appeal.**

(1) The department shall grant or deny an application for a certificate of public advantage within ninety days after the date of filing of the application, not including days the application is deemed to be incomplete. The decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General, and any intervenor.

(2) If the department grants the application, the parties shall have forty-five days after the date of receipt of the department's decision to submit an executed written copy of the cooperative agreement which shall be in accordance with the terms and conditions set out in the letter of intent and the application. The department shall review the executed written copy of the cooperative agreement and, if it is in accordance with the terms and conditions set out in the letter of intent and the application, the department shall issue a certificate of public advantage for the cooperative agreement.

(3) If the applicants desire to contest the denial or the intervenors desire to contest the granting of an application, they shall, within ten days after receipt of the notice of denial or within ten days after the granting of an application, send a written request to the department for a hearing under sections 84-913 and 84-915.

(4) A denial or granting by the department of an application or a termination of a certificate of public advantage under section 71-7707 may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1994, LB 1210, § 181; Laws 1994, LB 1223, § 115.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-7706 Certificate of public advantage; issuance; considerations.**

(1) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(2) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(a) Enhancement of the quality of health care facility care and provider care provided to Nebraska citizens;

(b) Preservation of health care facilities, including those in other states, in geographical proximity to the communities traditionally served by such facilities;

(c) Gains in the cost efficiency of services provided by the health care facilities or providers involved or by other health care facilities or providers in this state;

(d) Improvements in the utilization of health care facility resources and equipment;

(e) Avoidance of duplication of health care facility resources;

(f) Enhancement, maintenance, or preservation of competition for the services or goods involved; and

(g) Mitigation of adverse environmental impact or enhancement of positive environmental impact.

(3) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(a) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payors to negotiate advantageous payment and service arrangements with health care facilities or providers;

(b) The extent of any reduction in competition among health care facilities or providers or other persons furnishing goods or services to or in competition with health care facilities that is likely to result directly or indirectly from the cooperative agreement;

(c) The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

(d) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

**Source:** Laws 1994, LB 1223, § 116.

#### **71-7707 Certificate of public advantage; termination.**

If the department determines at any time that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department shall initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

**Source:** Laws 1994, LB 1223, § 117.

#### **Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-7708 Parties to agreement; report; petition to terminate certificate; adverse job actions prohibited.**

(1) The department shall require the parties to a cooperative agreement for which a certificate of public advantage has been issued to report annually on the functioning of the cooperative agreement for the preceding year. The report shall be in such form and contain such information as the department in its discretion deems necessary to make the determination required by section 71-7707.

(2) Any interested person may petition the department to determine that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement. In such case, the department may initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

(3) It shall be unlawful for an employer to take any adverse job action against any employee because such employee has petitioned, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the Health Care Facility-Provider Cooperation Act.

**Source:** Laws 1994, LB 1223, § 118.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-7709 Parties and participants; immunity; notice; act, how construed.**

(1) Any party to a cooperative agreement which has been approved in whole or in part by the department pursuant to the Health Care Facility-Provider Cooperation Act shall be immune from any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement such agreement or any decision or order issued by the department.

(2) Any part to a cooperative agreement that has been filed with the department pursuant to the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from the negotiation of or entering into the cooperative agreement.

(3) All persons who participate in community planning, discussions, or negotiations intended in good faith to culminate in a cooperative agreement to be filed with the department pursuant to the provisions of the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from such conduct.

(4)(a) The immunity provided in this section shall apply only to community planning, discussions, and negotiations that occur after notice of such activities has been sent to the department in accordance with the requirements of subdivision (b) of this subsection.

(b) The notice to the department required by subdivision (a) of this subsection shall include a description of the proposed purpose of the agreement, the potential parties, and the potential nature and scope of the cooperation and joint activities contemplated. The persons filing such notice shall also notify the department if negotiations have terminated, or if negotiations are continuing they shall notify the department of progress of negotiation at least once every six months. The department may request additional information from the

potential parties and may communicate with and monitor the parties in any manner the department deems necessary but shall not hinder or interfere with negotiations.

(5) The submission of a cooperative agreement for department approval pursuant to the act shall be voluntary, and the failure of the parties to any such agreement to seek approval shall not be admissible in any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement the cooperative agreement.

(6) Nothing in the act shall be construed to limit the application of any other statute concerning the licensure of facilities, services, or professions, and any activities undertaken pursuant to a cooperative agreement shall comply with applicable law.

**Source:** Laws 1994, LB 1223, § 119.

**71-7710 Act; how construed.**

Nothing in the Health Care Facility-Provider Cooperation Act shall be construed to prohibit:

(1) The formation of a cooperative agreement that has been approved in whole or in part in accordance with the act;

(2) Community planning, discussions, or negotiations intended in good faith to cumulate in a cooperative agreement to be filed with the department;

(3) Any conduct or activity reasonably necessary and reasonably foreseeable to implement an approved cooperative agreement or a decision or order issued by the department; or

(4) The negotiation of or entering into a cooperative agreement which is filed with the department. Such agreements, conduct, or activities shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the act. Directors, trustees, or their representatives of a health care facility or provider who participate in the discussion or negotiation shall be immune from civil actions or criminal prosecutions for a violation of state or federal antitrust laws unless the discussion or negotiation exceeds the scope authorized by the Health Care Facility-Provider Cooperation Act.

**Source:** Laws 1994, LB 1223, § 120.

**71-7711 Department; maintain copies of agreements; notice of termination, filing required.**

The department shall maintain on file a copy of all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

**Source:** Laws 1994, LB 1223, § 121.

**ARTICLE 78**

**HOSPICE LICENSURE ACT**

**Cross References**

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



Section

- 71-7801. Repealed. Laws 2000, LB 819, § 162.
- 71-7802. Repealed. Laws 2000, LB 819, § 162.
- 71-7803. Repealed. Laws 2000, LB 819, § 162.
- 71-7804. Repealed. Laws 2000, LB 819, § 162.
- 71-7805. Repealed. Laws 2000, LB 819, § 162.
- 71-7806. Repealed. Laws 2000, LB 819, § 162.

**71-7801 Repealed. Laws 2000, LB 819, § 162.**

**71-7802 Repealed. Laws 2000, LB 819, § 162.**

**71-7803 Repealed. Laws 2000, LB 819, § 162.**

**71-7804 Repealed. Laws 2000, LB 819, § 162.**

**71-7805 Repealed. Laws 2000, LB 819, § 162.**

**71-7806 Repealed. Laws 2000, LB 819, § 162.**

**ARTICLE 79**

**HEALTH CARE QUALITY IMPROVEMENT ACT**

(a) PEER REVIEW COMMITTEES

Section

- 71-7901. Repealed. Laws 2011, LB 431, § 17.
- 71-7902. Repealed. Laws 2011, LB 431, § 17.
- 71-7903. Repealed. Laws 2011, LB 431, § 17.

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

- 71-7904. Act, how cited.
- 71-7905. Purposes of act.
- 71-7906. Definitions, where found.
- 71-7907. Health care provider, defined.
- 71-7908. Incident report, defined.
- 71-7909. Peer review, defined.
- 71-7910. Peer review committee, defined.
- 71-7911. Liability for activities relating to peer review.
- 71-7912. Confidentiality; discovery; availability of medical records, documents, or information; limitation.
- 71-7913. Incident report or risk management report; how treated.

(a) PEER REVIEW COMMITTEES

**71-7901 Repealed. Laws 2011, LB 431, § 17.**

**71-7902 Repealed. Laws 2011, LB 431, § 17.**

**71-7903 Repealed. Laws 2011, LB 431, § 17.**

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

**71-7904 Act, how cited.**

Sections 71-7904 to 71-7913 shall be known and may be cited as the Health Care Quality Improvement Act.

**Source:** Laws 2011, LB431, § 1.

**71-7905 Purposes of act.**

The purposes of the Health Care Quality Improvement Act are to provide protection for those individuals who participate in peer review activities which evaluate the quality and efficiency of health care providers and to protect the confidentiality of peer review records.

**Source:** Laws 2011, LB431, § 2.

**71-7906 Definitions, where found.**

For purposes of the Health Care Quality Improvement Act, the definitions found in sections 71-7907 to 71-7910 apply.

**Source:** Laws 2011, LB431, § 3.

**71-7907 Health care provider, defined.**

Health care provider means:

- (1) A facility licensed under the Health Care Facility Licensure Act;
- (2) A health care professional licensed under the Uniform Credentialing Act; and
- (3) An organization or association of health care professionals licensed under the Uniform Credentialing Act.

**Source:** Laws 2011, LB431, § 4.

**Cross References**

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

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

**71-7908 Incident report, defined.**

Incident report or risk management report means a report of an incident involving injury or potential injury to a patient as a result of patient care provided by a health care provider, including both an individual who provides health care and an entity that provides health care, that is created specifically for and collected and maintained for exclusive use by a peer review committee of a health care entity and that is within the scope of the functions of that committee.

**Source:** Laws 2011, LB431, § 5.

**71-7909 Peer review, defined.**

Peer review means the procedure by which health care providers evaluate the quality and efficiency of services ordered or performed by other health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, root cause analysis, claims review, underwriting assistance, and the compliance of a hospital, nursing home, or other health care facility operated by a health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

**Source:** Laws 2011, LB431, § 6.

**71-7910 Peer review committee, defined.**

Peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, cre-

dentiaing committee, or other committee established by the governing board of a facility which is a health care provider that does either of the following:

- (1) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by a health care provider, including both an individual who provides health care and an entity that provides health care; or
- (2) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

**Source:** Laws 2011, LB431, § 7.

#### **71-7911 Liability for activities relating to peer review.**

(1) A health care provider or an individual (a) serving as a member or employee of a peer review committee, working on behalf of a peer review committee, furnishing counsel or services to a peer review committee, or participating in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider and (b) acting without malice shall not be held liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee.

(2) A person who makes a report or provides information to a peer review committee shall not be subject to suit as a result of providing such information if such person acts without malice.

**Source:** Laws 2011, LB431, § 8.

#### **71-7912 Confidentiality; discovery; availability of medical records, documents, or information; limitation.**

(1) The proceedings, records, minutes, and reports of a peer review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action. No person who attends a meeting of a peer review committee, works for or on behalf of a peer review committee, provides information to a peer review committee, or participates in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of the peer review committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof.

(2) Nothing in this section shall be construed to prevent discovery or use in any civil action of medical records, documents, or information otherwise available from original sources and kept with respect to any patient in the ordinary course of business, but the records, documents, or information shall be available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.

**Source:** Laws 2011, LB431, § 9.

#### **71-7913 Incident report or risk management report; how treated.**

An incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a civil action for damages for injury,

death, or loss to a patient of a health care provider. A person who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in any civil action as to the contents of the report.

**Source:** Laws 2011, LB431, § 10.

## ARTICLE 80

### CERTIFIED INDUSTRIAL HYGIENIST TITLE PROTECTION ACT

#### Section

- 71-8001. Act, how cited.
- 71-8002. Legislative intent.
- 71-8003. Industrial hygiene, defined.
- 71-8004. Individual; use of title; requirements.
- 71-8005. Business enterprise; use of certified industrial hygienist required; when.
- 71-8006. Violations; unfair trade practice; civil penalty.
- 71-8007. Act; applicability.
- 71-8008. Department of Health and Human Services; rules and regulations.

#### **71-8001 Act, how cited.**

Sections 71-8001 to 71-8008 shall be known and may be cited as the Certified Industrial Hygienist Title Protection Act.

**Source:** Laws 1997, LB 558, § 1.

#### **71-8002 Legislative intent.**

It is the intent of the Legislature to provide legal recognition to the professional practice of industrial hygiene so as to provide assurance to government, business, private entities, and the public that a person who represents himself or herself as a certified industrial hygienist or a person who or an entity which represents that he, she, or it provides industrial hygiene services by or under the direction and supervision of a certified industrial hygienist is actually such individual or directly employs such individuals having the qualifications stated in the Certified Industrial Hygienist Title Protection Act.

**Source:** Laws 1997, LB 558, § 2.

#### **71-8003 Industrial hygiene, defined.**

For purposes of the Certified Industrial Hygienist Title Protection Act, industrial hygiene means the science and practice devoted to the anticipation, recognition, evaluation, and specification of controls of environmental factors, stressors, physical hazards, and chemical exposures associated with work and work operations that may cause sickness, impaired health and well-being, or significant discomfort among workers and the general community.

**Source:** Laws 1997, LB 558, § 3.

#### **71-8004 Individual; use of title; requirements.**

(1) An individual shall not use the title of or represent or advertise himself or herself as a certified industrial hygienist, CIH, or C.I.H. unless such individual has received the designation Certified Industrial Hygienist from the American Board of Industrial Hygiene and the designation as such has not lapsed or been revoked.

(2) An individual shall not use for title or professional identification or as a personal credential any variation on the terms described in subsection (1) of this section using the words "Certified Industrial Hygienist" and shall not use initials that indicate such a title unless the individual meets the requirements of this section.

**Source:** Laws 1997, LB 558, § 4.

**71-8005 Business enterprise; use of certified industrial hygienist required; when.**

A business enterprise shall not identify, represent, or advertise itself as a provider of industrial hygiene services provided by or under the direction and supervision of a certified industrial hygienist or a variation of such words unless the individuals directly employed by such enterprise to actually engage in any business practice which could be classified as industrial hygiene using the services of a certified industrial hygienist satisfy the requirements of the Certified Industrial Hygienist Title Protection Act. The action or intent of any business enterprise to provide for compensation the services of a certified industrial hygienist through subcontracting, subconsulting, or any means other than direct employment of a certified industrial hygienist shall be clearly conveyed in writing by the soliciting business enterprise to the prospective target audience of interest or buyer of such industrial hygiene services.

**Source:** Laws 1997, LB 558, § 5.

**71-8006 Violations; unfair trade practice; civil penalty.**

An individual or business enterprise who violates section 71-8004 or 71-8005 commits an unfair trade practice. Any person or entity injured by such a violation shall have a right of action against the violator for damages for each occurrence when any person or entity suffered or suffers loss.

An individual or business enterprise that violates the Certified Industrial Hygienist Title Protection Act shall be subject to a civil penalty of not more than two thousand dollars. The Attorney General or the county attorney of the county in which such violation occurs shall, when he or she has knowledge of such violation, institute an action in such county to collect the penalty imposed by this section. Money collected pursuant to such action shall be remitted to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1997, LB 558, § 6.

**71-8007 Act; applicability.**

The Certified Industrial Hygienist Title Protection Act does not regulate or otherwise limit the activity of any individual or entity that does not represent or advertise himself, herself, or itself as a certified industrial hygienist, CIH, or C.I.H. or as a provider of services to be performed by a certified industrial hygienist.

**Source:** Laws 1997, LB 558, § 7.

**71-8008 Department of Health and Human Services; rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to implement the Certified Industrial Hygienist Title

Protection Act and to further regulate the use of the term certified industrial hygienist.

**Source:** Laws 1997, LB 558, § 8; Laws 2007, LB296, § 687.

### ARTICLE 81

#### GENETIC TECHNOLOGIES

##### Section

- 71-8101. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8102. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8103. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8104. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8105. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8106. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
- 71-8107. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

**71-8101 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8102 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8103 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8104 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8105 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8106 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

**71-8107 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.**

### ARTICLE 82

#### STATEWIDE TRAUMA SYSTEM ACT

##### Cross References

**Emergency Medical Services Practice Act**, see section 38-1201.

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

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

##### Section

- 71-8201. Act, how cited.
- 71-8202. Legislative findings.
- 71-8203. Definitions, where found.
- 71-8204. Advanced level rehabilitation center, defined.
- 71-8205. Advanced level trauma center, defined.
- 71-8206. Transferred to section 71-8220.01.
- 71-8207. Basic level trauma center, defined.
- 71-8208. Communications system, defined.
- 71-8209. Complete data set, defined.
- 71-8210. Comprehensive level trauma center, defined.
- 71-8211. Department, defined.
- 71-8212. Designated rehabilitation centers, defined.
- 71-8213. Designated trauma centers, defined.
- 71-8214. Designation, defined.
- 71-8215. Emergency medical service, defined.
- 71-8216. Emergency medical services and trauma plan, defined.
- 71-8217. General level rehabilitation center, defined.
- 71-8218. General level trauma center, defined.
- 71-8219. Hospital, defined.
- 71-8220. Interfacility or intrafacility transfer and bypass, defined.
- 71-8220.01. Intermediate level rehabilitation center, defined.

Section	
71-8221.	Minimum data set, defined.
71-8222.	Online physician or qualified physician surrogate, defined.
71-8223.	Repealed. Laws 2009, LB 195, § 111.
71-8224.	Patient care protocols, defined.
71-8225.	Pediatric trauma patient, defined.
71-8226.	Physician medical director, defined.
71-8227.	Qualified physician surrogate, defined.
71-8228.	Regional medical director, defined.
71-8229.	Rehabilitative services, defined.
71-8230.	Specialty level burn or pediatric trauma center, defined.
71-8231.	State trauma medical director, defined.
71-8232.	Trauma, defined.
71-8233.	Trauma care regions, defined.
71-8234.	Trauma team, defined.
71-8235.	Trauma system, defined.
71-8236.	State Trauma Advisory Board; created; members; terms; expenses.
71-8237.	State Trauma Advisory Board; duties.
71-8238.	State Trauma System Cash Fund; created; use; investment.
71-8239.	Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.
71-8240.	Department; statewide duties.
71-8241.	Department; coordination.
71-8242.	Department; startup activities; duties.
71-8243.	Centers; categorized; requirements.
71-8244.	Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.
71-8245.	Onsite reviews; applicant; duties; confidentiality; fees.
71-8246.	Regional trauma system; department; duties.
71-8247.	Regional trauma system quality assurance program; established.
71-8248.	Statewide trauma registry.
71-8249.	Statewide trauma registry; data; confidentiality.
71-8250.	Trauma care regions; designated.
71-8251.	Regional trauma advisory boards; established; members; expenses.
71-8252.	Regional trauma advisory boards; powers and duties.
71-8253.	Act; how construed.

#### **71-8201 Act, how cited.**

Sections 71-8201 to 71-8253 shall be known and may be cited as the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 1; Laws 2015, LB46, § 1.

#### **71-8202 Legislative findings.**

The Legislature finds and declares that:

- (1) Trauma is a severe health problem in the State of Nebraska and a major cause of death and long-term disability;
- (2) Trauma care is very limited in many parts of Nebraska, particularly in rural areas where there is a growing danger that some communities may be left without adequate emergency medical care;
- (3) It is in the best interests of the citizens of Nebraska to establish an efficient and well-coordinated statewide trauma system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service; and
- (4) The goals and objectives of a statewide trauma system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for trauma victims; (c) prevent unnecessary death and disability

from trauma and emergency illness without regard to insurance or ability to pay and utilize the protocols established in the rules and regulations adopted under the Statewide Trauma System Act; and (d) contain costs of trauma care and trauma system implementation.

**Source:** Laws 1997, LB 626, § 2.

**71-8203 Definitions, where found.**

For purposes of the Statewide Trauma System Act, the definitions found in sections 71-8204 to 71-8235 apply.

**Source:** Laws 1997, LB 626, § 3; Laws 2015, LB46, § 2.

**71-8204 Advanced level rehabilitation center, defined.**

Advanced level rehabilitation center means a rehabilitation center which, in addition to the services provided at intermediate level and general level rehabilitation centers, provides services to patients with traumatic brain or spinal injuries, complicated amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity, and serves as a referral facility for intermediate level and general level rehabilitative services.

**Source:** Laws 1997, LB 626, § 4; Laws 2015, LB46, § 3.

**71-8205 Advanced level trauma center, defined.**

Advanced level trauma center means a trauma center which, in addition to providing all of the services provided by basic level and general level trauma centers, also provides definitive care for complex and severe trauma, an emergency trauma team available within fifteen minutes, twenty-four hours per day, inhouse operating room personnel who initiate surgery, a neurosurgeon available who provides neurological assessment and stabilization, a broad range of specialists available for consultation or care, comprehensive diagnostic capabilities and support equipment, and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

**Source:** Laws 1997, LB 626, § 5; Laws 2009, LB195, § 88.

**71-8206 Transferred to section 71-8220.01.**

**71-8207 Basic level trauma center, defined.**

Basic level trauma center means a trauma center which has a trauma-trained physician, advanced practice registered nurse, or physician assistant available within thirty minutes to provide stabilization and transfer to a higher level trauma center when appropriate, which has basic equipment for resuscitation and stabilization, which maintains appropriate equipment for pediatric trauma patients for resuscitation and stabilization, and which may provide limited surgical intervention based upon the expertise of available onsite staff.

**Source:** Laws 1997, LB 626, § 7; Laws 2000, LB 1115, § 86; Laws 2009, LB195, § 89.

**71-8208 Communications system, defined.**



Communications system means any network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in the trauma system.

**Source:** Laws 1997, LB 626, § 8; Laws 2009, LB195, § 90.

**71-8209 Complete data set, defined.**

Complete data set means a predetermined set of demographic and medical definitions that includes the minimum data set with additional data points as set forth in the rules and regulations adopted under the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 9.

**71-8210 Comprehensive level trauma center, defined.**

Comprehensive level trauma center means a trauma center which (1) provides the highest level of definitive, comprehensive care for patients with complex traumatic injury, (2) provides an emergency trauma team available within fifteen minutes, twenty-four hours per day, including inhouse, immediately available personnel who can initiate surgery and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room, and (3) is responsible for research, education, and out-reach programs for trauma.

**Source:** Laws 1997, LB 626, § 10; Laws 2009, LB195, § 91.

**71-8211 Department, defined.**

Department means the Division of Public Health of the Department of Health and Human Services.

**Source:** Laws 1997, LB 626, § 11; Laws 2007, LB296, § 688.

**71-8212 Designated rehabilitation centers, defined.**

Designated rehabilitation centers means advanced, intermediate, or general level rehabilitation centers.

**Source:** Laws 1997, LB 626, § 12; Laws 2015, LB46, § 4.

**71-8213 Designated trauma centers, defined.**

Designated trauma centers means advanced, basic, comprehensive, general, and specialty level trauma centers.

**Source:** Laws 1997, LB 626, § 13.

**71-8214 Designation, defined.**

Designation means a formal determination by the department that a hospital or health care facility is capable of providing designated trauma care or rehabilitative services as authorized in the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 14.

**71-8215 Emergency medical service, defined.**

Emergency medical service means the organization responding to a perceived individual need for medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

**Source:** Laws 1997, LB 626, § 15; Laws 2012, LB646, § 3.

**71-8216 Emergency medical services and trauma plan, defined.**

Emergency medical services and trauma plan means the statewide plan that identifies statewide emergency medical service and trauma care objectives and priorities and identifies equipment, facilities, personnel, training, and other needs required to create and maintain the statewide trauma system established in section 71-8239. Emergency medical services and trauma plan also includes a plan of implementation that identifies the state and regional activities that will create, operate, maintain, and enhance the system. The plan shall be formulated by incorporating the regional trauma plans required under the Statewide Trauma System Act. The plan shall be updated every five years.

**Source:** Laws 1997, LB 626, § 16; Laws 2009, LB195, § 92.

**71-8217 General level rehabilitation center, defined.**

General level rehabilitation center means a rehabilitation center which provides services to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas, with minimum to moderate impairment or complexity.

**Source:** Laws 1997, LB 626, § 17; Laws 2015, LB46, § 5.

**71-8218 General level trauma center, defined.**

General level trauma center means a trauma center that (1) provides initial evaluation and stabilization, including surgical stabilization if appropriate, and general medical and surgical inpatient services to patients who can be maintained in a stable or improving condition without specialized care, (2) prepares for transfer and transfers patients meeting predetermined criteria pursuant to the rules and regulations adopted under the Statewide Trauma System Act to higher level trauma centers, (3) is physician directed within a formally organized trauma team, (4) provides trauma-trained physicians and nurses to the emergency department within thirty minutes of notification, (5) has personnel available who can initiate surgery, (6) has appropriate diagnostic capabilities and equipment, and (7) maintains appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

**Source:** Laws 1997, LB 626, § 18; Laws 2009, LB195, § 93.

**71-8219 Hospital, defined.**

Hospital means a health care facility licensed under the Health Care Facility Licensure Act or a comparable health care facility operated by the federal government or located and licensed in another state.

**Source:** Laws 1997, LB 626, § 19; Laws 2000, LB 819, § 146.

**Cross References**

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

**71-8220 Interfacility or intrafacility transfer and bypass, defined.**

Interfacility or intrafacility transfer and bypass means the transfer of every trauma patient to the highest appropriate level center that is deemed medically appropriate for his or her injury.

**Source:** Laws 1997, LB 626, § 20.

**71-8220.01 Intermediate level rehabilitation center, defined.**

Intermediate level rehabilitation center means a rehabilitation center which provides rehabilitative services to individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas, with moderate to severe impairment or complexity.

**Source:** Laws 1997, LB 626, § 6; R.S.1943, (2009), § 71-8206; Laws 2015, LB46, § 6.

**71-8221 Minimum data set, defined.**

Minimum data set means a predetermined set of demographic and medical definitions set forth in the rules and regulations adopted under the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 21.

**71-8222 Online physician or qualified physician surrogate, defined.**

Online physician or qualified physician surrogate means a physician or a qualified physician surrogate, preferably within the region, who is providing medical direction to the emergency medical service providing life support and stabilization and includes interfacility or intrafacility transfer and bypass to a higher level trauma center.

**Source:** Laws 1997, LB 626, § 22; Laws 2009, LB195, § 94.

**71-8223 Repealed. Laws 2009, LB 195, § 111.**

**71-8224 Patient care protocols, defined.**

Patient care protocols means the written procedures adopted by the medical staff of a trauma center, specialty level burn or pediatric trauma center, or rehabilitation center that direct the care of the patient, based upon the assessment of the patient's medical needs. Patient care protocols shall follow minimum statewide standards for trauma care services.

**Source:** Laws 1997, LB 626, § 24.

**71-8225 Pediatric trauma patient, defined.**

Pediatric trauma patient means a trauma patient known or estimated to be less than sixteen years of age.

**Source:** Laws 1997, LB 626, § 25.

**71-8226 Physician medical director, defined.**

Physician medical director means a qualified physician who is responsible for the medical supervision of out-of-hospital emergency care providers and verification of skill proficiency of out-of-hospital emergency care providers.

**Source:** Laws 1997, LB 626, § 26.

**71-8227 Qualified physician surrogate, defined.**

Qualified physician surrogate means a qualified, trained medical person, designated by a qualified physician in writing to act as an agent for the physician in directing the actions of out-of-hospital emergency care providers.

**Source:** Laws 1997, LB 626, § 27.

**71-8228 Regional medical director, defined.**

Regional medical director means a physician licensed under the Uniform Credentialing Act who shall report to the Director of Public Health and carry out the regional plan for his or her region.

**Source:** Laws 1997, LB 626, § 28; Laws 1999, LB 594, § 62; Laws 2007, LB296, § 689; Laws 2007, LB463, § 1303.

## Cross References

Uniform Credentialing Act, see section 38-101.

**71-8229 Rehabilitative services, defined.**

Rehabilitative services means a system or collection of comprehensive medical and therapy services that are interdisciplinary, coordinated, and resource-intensive with the goal of restoring physical, cognitive, psychological, social, and vocational functioning so that an individual can return to home, work, or society, becoming a productive participant in his or her community.

**Source:** Laws 1997, LB 626, § 29; Laws 2015, LB46, § 7.

**71-8230 Specialty level burn or pediatric trauma center, defined.**

Specialty level burn or pediatric trauma center means a trauma center that (1) provides specialized care in the areas of burns or pediatrics, (2) provides continuous accessibility regardless of day, season, or patient's ability to pay, and (3) has entry access from each of the designation levels as its online physician or qualified physician surrogate deems appropriate.

**Source:** Laws 1997, LB 626, § 30; Laws 2009, LB195, § 95; Laws 2015, LB46, § 8.

**71-8231 State trauma medical director, defined.**

State trauma medical director means a physician licensed under the Uniform Credentialing Act who reports to the Director of Public Health and carries out duties under the Statewide Trauma System Act.

**Source:** Laws 1997, LB 626, § 31; Laws 1999, LB 594, § 63; Laws 2007, LB296, § 690; Laws 2007, LB463, § 1304.

## Cross References

Uniform Credentialing Act, see section 38-101.

**71-8232 Trauma, defined.**

Trauma means a single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

**Source:** Laws 1997, LB 626, § 32; Laws 2009, LB195, § 96.

**71-8233 Trauma care regions, defined.**

Trauma care regions means geographic areas established by the department under section 71-8250.

**Source:** Laws 1997, LB 626, § 33.

**71-8234 Trauma team, defined.**

Trauma team means a team of physicians, nurses, medical technicians, and other personnel compiled to create a seamless response to an acutely injured patient in a hospital emergency department.

**Source:** Laws 1997, LB 626, § 34; Laws 2009, LB195, § 97.

**71-8235 Trauma system, defined.**

Trauma system means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma system shall identify facilities with specific capabilities to provide care and provide that trauma patients be treated at a designated trauma center appropriate to the patient's level of injury. Trauma system includes prevention, prehospital or out-of-hospital care, hospital care, and rehabilitative services regardless of insurance carrier or ability to pay.

**Source:** Laws 1997, LB 626, § 35; Laws 2009, LB195, § 98.

**71-8236 State Trauma Advisory Board; created; members; terms; expenses.**

The State Trauma Advisory Board is created. The board shall be composed of representatives knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, prehospital or out-of-hospital providers, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The Director of Public Health or his or her designee shall appoint the members of the board for staggered terms of three years each. The department shall provide administrative support to the board. All members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as such members as provided in sections 81-1174 to 81-1177. The terms of members representing the same field shall not expire at the same time.

The board shall elect a chairperson and a vice-chairperson whose terms of office shall be for two years. The board shall meet at least twice per year by written request of the director or the chairperson.

**Source:** Laws 1997, LB 626, § 36; Laws 1998, LB 898, § 1; Laws 1999, LB 594, § 64; Laws 2007, LB296, § 691.

**71-8237 State Trauma Advisory Board; duties.**

The State Trauma Advisory Board shall:

- (1) Advise the department regarding trauma care needs throughout the state;
- (2) Advise the Board of Emergency Medical Services regarding trauma care to be provided throughout the state by out-of-hospital and emergency medical services;

- (3) Review the regional trauma plans and recommend changes to the department before the department adopts the plans;
- (4) Review proposed departmental rules and regulations for trauma care;
- (5) Recommend modifications in rules regarding trauma care; and
- (6) Draft a five-year statewide prevention plan that each trauma care region shall implement.

**Source:** Laws 1997, LB 626, § 37; Laws 2009, LB195, § 99.

**71-8238 State Trauma System Cash Fund; created; use; investment.**

The State Trauma System Cash Fund is created. The department may apply for, receive, and accept gifts and other payments, including property and services, for the fund from any governmental or other public or private entity or person and may utilize the fund for activities related to the design, maintenance, or enhancements of the statewide trauma system. Disbursements from the fund shall be made by the department. 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 1997, LB 626, § 38.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**71-8239 Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.**

(1) The department, in consultation with and having solicited the advice of the State Trauma Advisory Board, shall establish and maintain the statewide trauma system.

(2) The department, with the advice of the board, shall adopt and promulgate rules and regulations to carry out the Statewide Trauma System Act.

(3) The Director of Public Health or his or her designee shall appoint the state trauma medical director and the regional medical directors.

**Source:** Laws 1997, LB 626, § 39; Laws 2007, LB296, § 692; Laws 2009, LB195, § 100.

**71-8240 Department; statewide duties.**

The department shall establish and maintain the following on a statewide basis:

- (1) Trauma system objectives and priorities;
- (2) Minimum trauma standards for facilities, equipment, and personnel for advanced, basic, comprehensive, and general level trauma centers and specialty level burn or pediatric trauma centers;
- (3) Minimum standards for facilities, equipment, and personnel for advanced, intermediate, and general level rehabilitation centers;
- (4) Minimum trauma standards for the development of facility patient care protocols;
- (5) Trauma care regions as provided for in section 71-8250;
- (6) Recommendations for an effective trauma transportation system;

(7) The minimum number of hospitals and health care facilities in the state and within each trauma care region that may provide designated trauma care services based upon approved regional trauma plans;

(8) The minimum number of prehospital or out-of-hospital care providers in the state and within each trauma care region that may provide trauma care services based upon approved regional trauma plans;

(9) A format for submission of the regional trauma plans to the department;

(10) A program for emergency medical services and trauma care research and development;

(11) Review and approve regional trauma plans;

(12) The initial designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the approved regional trauma plan; and

(13) The trauma implementation plan incorporating the regional trauma plans.

**Source:** Laws 1997, LB 626, § 40; Laws 2009, LB195, § 101; Laws 2015, LB46, § 9.

**71-8241 Department; coordination.**

The department shall coordinate the statewide trauma system to assure integration and smooth operation among the trauma care regions and facilitate coordination of the State Trauma Advisory Board and the Board of Emergency Medical Services to monitor the system.

**Source:** Laws 1997, LB 626, § 41.

**71-8242 Department; startup activities; duties.**

The department shall:

(1) Purchase and maintain the statewide trauma registry pursuant to section 71-8248 to assess the effectiveness of trauma delivery and modify standards and other requirements of the statewide trauma system, to improve the provision of emergency medical services and trauma care;

(2) Develop patient outcome measures to assess the effectiveness of trauma care in the system;

(3) Develop standards for regional trauma care quality assurance programs; and

(4) Coordinate and develop trauma prevention and education programs.

The department shall administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide trauma system.

**Source:** Laws 1997, LB 626, § 42; Laws 2009, LB195, § 102.

**71-8243 Centers; categorized; requirements.**

Designated trauma centers and rehabilitation centers that receive trauma patients shall be categorized according to designation under the Statewide Trauma System Act. All levels of centers shall follow federal regulation guide-

lines and established referral patterns, as appropriate, to facilitate a seamless patient-flow system.

**Source:** Laws 1997, LB 626, § 43; Laws 1999, LB 594, § 65; Laws 2009, LB195, § 103.

**71-8244 Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.**

(1) Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center that desires to be a designated center shall request designation from the department whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide trauma system. The department shall determine by rule and regulation the manner and form of such requests.

(2) Upon receiving a request, the department shall review the request to determine whether there is compliance with standards for the trauma care level for which designation is desired or whether the appropriate verification or accreditation documentation has been submitted. Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center which submits verification or accreditation documentation from a recognized independent verification or accreditation body or public agency with standards that are at least as stringent as those of the State of Nebraska for the trauma care level for which designation is desired as determined by the State Trauma Advisory Board shall be designated by the department and shall be included in the trauma system or plan established under the Statewide Trauma System Act. Any medical facility that is currently verified or accredited shall be designated by the department at the corresponding level of designation for the same time period in Nebraska without the necessity of an onsite review by the department.

(3) Any medical facility applying for designation may appeal its designation. The appeal shall be in accordance with the Administrative Procedure Act.

(4) Except as otherwise provided in subsection (2) of this section, designation is valid for a period of four years and is renewable upon receipt of a request from the medical facility for renewal prior to expiration.

(5) Regional trauma advisory boards shall be notified promptly of designated medical facilities in their region so they may incorporate them into the regional plan.

(6) The department may revoke or suspend a designation if it determines that the medical facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional trauma advisory board of designation suspensions and revocations. Any rehabilitation or trauma center the designation of which has been revoked or suspended may request a hearing to review the action of the department.

**Source:** Laws 1997, LB 626, § 44; Laws 2009, LB195, § 104; Laws 2015, LB46, § 10.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

**71-8245 Onsite reviews; applicant; duties; confidentiality; fees.**



(1) As part of the process to designate and renew the designation of hospitals and health care facilities as advanced, basic, comprehensive, or general level trauma centers, the department may contract for onsite reviews of such hospitals and health care facilities to determine compliance with required standards. As part of the process to designate a health care facility as a general, an intermediate, or an advanced level rehabilitation center or a specialty level burn or pediatric trauma center, the applicant shall submit to the department documentation of current verification or accreditation.

(2) Members of onsite review teams and staff included in onsite visits shall not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department:

(a) In actions arising out of the designation of a hospital or health care facility pursuant to section 71-8244;

(b) In actions arising out of the revocation or suspension of a designation under such section; or

(c) In actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider, subject to any further restrictions on disclosure that may apply.

(3) Information that identifies an individual patient shall not be publicly disclosed without the patient's consent.

(4) When a medical facility requests designation for more than one service, the department may coordinate the joint consideration of such requests. Composition and qualification of the designation team shall be set forth in rules and regulations adopted under the Statewide Trauma System Act. Reports prepared pursuant to this section shall not be considered public records.

(5) The department may establish fees to defray the costs of carrying out onsite reviews required by this section, but such fees shall not be assessed to health care facilities designated as basic or general level trauma centers.

(6) This section does not restrict the authority of a hospital or a health care provider to provide services which it has been authorized to provide by state law.

**Source:** Laws 1997, LB 626, § 45; Laws 2009, LB195, § 105; Laws 2015, LB46, § 11.

**71-8246 Regional trauma system; department; duties.**

The department shall develop the regional trauma system. The department shall:

(1) Assess and analyze regional trauma care needs;

(2) Identify personnel, agencies, facilities, equipment, training, and education needed to meet regional needs;

(3) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(4) Promote agreements with providers outside the region to facilitate patient transfer;

(5) Establish a regional budget;

(6) Establish the minimum number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region; and

(7) Include other specific elements defined by the department.

**Source:** Laws 1997, LB 626, § 46; Laws 2009, LB195, § 106.

**71-8247 Regional trauma system quality assurance program; established.**

In each trauma region, a regional trauma system quality assurance program shall be established by the health care facilities designated as advanced, basic, comprehensive, and general level trauma centers. The quality assurance program shall evaluate trauma data quality, trauma care delivery, patient care outcomes, and compliance with the Statewide Trauma System Act. The regional medical director and all health care providers and facilities which provide trauma care services within the region shall be invited to participate in the quality assurance program.

**Source:** Laws 1997, LB 626, § 47; Laws 2009, LB195, § 107.

**71-8248 Statewide trauma registry.**

The department shall establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of prehospital or out-of-hospital care and hospital trauma care services. Specific data elements of the registry shall be defined by rule and regulation of the department. Every health care facility designated as an advanced, a basic, a comprehensive, or a general level trauma center, a specialty level burn or pediatric trauma center, an advanced, an intermediate, or a general level rehabilitation center, or a prehospital or out-of-hospital provider shall furnish data to the registry. All other hospitals may furnish trauma data as required by the department by rule and regulation. All hospitals involved in the care of a trauma patient shall have unrestricted access to all prehospital reports for the trauma registry for that specific trauma occurrence.

**Source:** Laws 1997, LB 626, § 48; Laws 2009, LB195, § 108; Laws 2015, LB46, § 12.

**71-8249 Statewide trauma registry; data; confidentiality.**

(1) All data collected under section 71-8248 shall be held confidential pursuant to sections 81-663 to 81-675. Confidential patient medical record data shall only be released as (a) Class I, II, or IV medical records under sections 81-663 to 81-675, (b) aggregate or case-specific data to the regional trauma system quality assurance program and the regional trauma advisory boards, (c) protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, and (d) protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, to an emergency medical service, to an out-of-hospital emergency care provider, to a licensed health care facility, or to a center that will treat or has treated a specific patient.

A record may be shared with the emergency medical service, the out-of-hospital emergency provider, the licensed health care facility, or center that reported that specific record.

(2) Patient care quality assurance proceedings, records, and reports developed pursuant to this section and section 71-8248 are confidential and are not subject to discovery by subpoena or admissible as evidence in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department, pursuant to section 25-12,123.

**Source:** Laws 1997, LB 626, § 49; Laws 2007, LB185, § 46; Laws 2008, LB797, § 27.

**71-8250 Trauma care regions; designated.**

The department shall designate trauma care regions so that all parts of the state are within such a region.

**Source:** Laws 1997, LB 626, § 50; Laws 2003, LB 467, § 2.

**71-8251 Regional trauma advisory boards; established; members; expenses.**

The department shall establish a regional trauma advisory board within each trauma care region. The department shall appoint members, to be comprised of a balance of hospital representatives and out-of-hospital emergency services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of emergency medical services and trauma care recommended by the local emergency medical services providers and medical facilities located within the region. All members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as such members pursuant to sections 81-1174 to 81-1177.

**Source:** Laws 1997, LB 626, § 51.

**71-8252 Regional trauma advisory boards; powers and duties.**

The regional trauma advisory boards:

- (1) Shall advise the department on matters relating to the delivery of trauma care services within the trauma care region;
- (2) Shall evaluate data and provide analysis required by the department to assess the effectiveness of the statewide trauma system; and
- (3) May apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the statewide trauma system in the trauma care region. Regional trauma advisory boards shall report in the regional budget the amount, source, and purpose of all gifts and payments.

**Source:** Laws 1997, LB 626, § 52; Laws 2007, LB185, § 47.

**71-8253 Act; how construed.**

(1) If there are conflicts between the Statewide Trauma System Act and the Emergency Medical Services Practice Act pertaining to out-of-hospital emer-

gency medical services, the Emergency Medical Services Practice Act shall control.

(2) Nothing in the Statewide Trauma System Act shall limit a patient's right to choose the physician, hospital, facility, rehabilitation center, specialty level burn or pediatric trauma center, or other provider of health care services.

**Source:** Laws 1997, LB 626, § 53; Laws 2007, LB463, § 1305.

**Cross References**

Emergency Medical Services Practice Act, see section 38-1201.

**ARTICLE 83**

**CREDENTIALING OF HEALTH CARE FACILITIES**

**Cross References**

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

**Section**

- 71-8301. Legislative intent.
- 71-8302. Definitions, where found.
- 71-8303. Credentialing, defined.
- 71-8304. Facility, defined.
- 71-8305. Health care services, defined.
- 71-8306. Human services, defined.
- 71-8307. Licensure, defined.
- 71-8308. Facilities not previously licensed; credentialing; when.
- 71-8309. Facilities not previously licensed; legislative intent.
- 71-8310. Currently licensed facilities; changes in credentialing; when.
- 71-8311. Currently licensed facilities; legislative intent.
- 71-8312. Facility regulation system; periodic review.
- 71-8313. Department; credentialing recommendations.
- 71-8314. Sections; how construed.

**71-8301 Legislative intent.**

It is the intent of the Legislature that quality health care services and human services be provided to all citizens of the state, that basic standards be developed to promote safe and adequate care of individuals in health care services facilities and human services facilities, that categories of facilities be regulated by the state solely for the purpose of protecting the public from unreasonable harm or danger, and that categories of facilities be regulated by the state only when it is demonstrated that regulation is in the best interest of the public.

The purposes of sections 71-8301 to 71-8314 are to establish criteria that provide for the determination of what categories of facilities should be regulated, to develop a quality improvement mechanism which would periodically examine and reexamine the laws, regulations, processes, and results of the facility regulation system, to establish a facility regulation system based on meaningful results, including quality indicators, and to assure that the development, application, and implementation of the facility regulation system is consistent and uniform.

**Source:** Laws 1998, LB 1073, § 107.

**71-8302 Definitions, where found.**

For purposes of sections 71-8301 to 71-8314, the definitions found in sections 71-8303 to 71-8307 are used.

**Source:** Laws 1998, LB 1073, § 108.

**71-8303 Credentialing, defined.**

Credentialing means the totality of the licensure processes associated with obtaining a license or changing aspects of an existing license.

**Source:** Laws 1998, LB 1073, § 109.

**71-8304 Facility, defined.**

Facility means any organization which provides health care services or human services to members of the general public.

**Source:** Laws 1998, LB 1073, § 110.

**71-8305 Health care services, defined.**

Health care services means services associated with the diagnosis and treatment of physical, mental, or emotional injury or illness or the prevention, rehabilitation, or continuing care related to health problems.

**Source:** Laws 1998, LB 1073, § 111.

**71-8306 Human services, defined.**

Human services means services that assist individuals in the conduct of daily living and includes the provision of food and shelter, a minimum amount of such assistance and personal care, and health-related services for individuals who are in need of a protected environment but who are otherwise able to manage normal activities of daily living.

**Source:** Laws 1998, LB 1073, § 112.

**71-8307 Licensure, defined.**

Licensure means the permission granted by the state to provide health care services or human services to the public which would otherwise be unlawful without such permission and which is granted to facilities which meet prerequisite qualifications pertinent to public health, safety, and welfare.

**Source:** Laws 1998, LB 1073, § 113.

**71-8308 Facilities not previously licensed; credentialing; when.**

Credentialing of categories of facilities not previously licensed should occur only when:

- (1) Credentialing is necessary to prevent harm or endangerment to the public health, safety, or welfare and the potential for the harm or endangerment is easily recognizable and not remote or dependent upon tenuous argument;
- (2) Credentialing would not significantly diminish the supply of qualified providers or would not otherwise diminish the public's access to needed services; and
- (3) There is no more cost-effective means of protecting the public from harm than credentialing.

**Source:** Laws 1998, LB 1073, § 114.

**71-8309 Facilities not previously licensed; legislative intent.**

If the Legislature finds that it is necessary for the protection of the public to regulate categories of facilities not previously regulated by state law after reviewing the criteria in section 71-8308 and considering governmental and societal costs and benefits, it is the intent of the Legislature that the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare be implemented.

**Source:** Laws 1998, LB 1073, § 115.

**71-8310 Currently licensed facilities; changes in credentialing; when.**

Changes in the credentialing of categories of currently licensed facilities should occur only when:

- (1) Credentialing is not needed to ensure the protection of the public health, safety, or welfare or the then current rules and regulations or statutory provisions are not providing adequate protection of the public health, safety, or welfare;
- (2) Credentialing has been more detrimental than beneficial to the public health, safety, or welfare by diminishing the supply of qualified providers or the public's access to needed services; or
- (3) There are more cost-effective means of protecting the public from harm than credentialing.

**Source:** Laws 1998, LB 1073, § 116.

**71-8311 Currently licensed facilities; legislative intent.**

If the Legislature finds that it is necessary for the protection of the public to make changes in the statutes regulating categories of facilities after reviewing the criteria in section 71-8310 and considering governmental and societal costs and benefits, it is the intent of the Legislature that changes be implemented which are the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare.

**Source:** Laws 1998, LB 1073, § 117.

**71-8312 Facility regulation system; periodic review.**

The Department of Health and Human Services shall periodically examine and reexamine the regulations, processes, and results of the facility regulation system. Changes in the facility regulation system should occur whenever the department finds that:

- (1) A program or procedure is not needed to ensure the protection of the public health, safety, or welfare or a program or procedure is not providing adequate protection of the public health, safety, or welfare;
- (2) A program or procedure has been more detrimental than beneficial to the fulfillment of the department's regulatory responsibilities as defined by law or has diminished the supply of qualified providers or the public's access to needed services; or
- (3) There are alternatives to a program or procedure that would more cost effectively fulfill the department's duties and responsibilities.

**Source:** Laws 1998, LB 1073, § 118; Laws 2007, LB296, § 693.

**71-8313 Department; credentialing recommendations.**

The Department of Health and Human Services shall review the regulation or proposed regulation of categories of facilities based on the criteria in sections 71-8301 to 71-8314. On or before November 1 of each year, the department shall provide the Legislature electronically with recommendations for credentialing of categories of facilities not previously regulated and changes in the statutes governing the credentialing of categories of facilities.

**Source:** Laws 1998, LB 1073, § 119; Laws 2007, LB296, § 694; Laws 2012, LB782, § 126.

**71-8314 Sections; how construed.**

Nothing in sections 71-8301 to 71-8314 is intended to authorize any certificate of need activities for facilities or to authorize the licensure of private practice health care services offices.

**Source:** Laws 1998, LB 1073, § 120.

**ARTICLE 84**

**MEDICAL RECORDS**

Section

- 71-8401. Legislative findings.
- 71-8402. Terms, defined.
- 71-8403. Access to medical records.
- 71-8404. Access; charges.
- 71-8405. Charges; exemptions.
- 71-8406. Provider; immunity.
- 71-8407. Sections; applicability.

**71-8401 Legislative findings.**

The Legislature finds that medical records contain personal and sensitive information that if improperly used or released may do significant harm to a patient's interests. Patients need access to their own medical records as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

**Source:** Laws 1999, LB 17, § 1.

**71-8402 Terms, defined.**

For purposes of sections 71-8401 to 71-8407:

- (1) Medical records means a provider's record of a patient's health history and treatment rendered;
- (2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act;
- (3) Patient includes a patient or former patient;
- (4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and
- (5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

**Source:** Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306.

Mental Health Practice Act, see section 38-2101.

**71-8403 Access to medical records.**

(1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

**Source:** Laws 1999, LB 17, § 3; Laws 2010, LB849, § 28.

**71-8404 Access; charges.**

Except as provided in sections 71-8405 and 71-8407, for medical records provided under section 71-8403 or under subpoena by a patient or his or her authorized representative a provider may charge no more than twenty dollars as a handling fee and may charge no more than fifty cents per page as a copying fee. A provider may charge for the reasonable cost of all duplications of medical records which cannot routinely be copied or duplicated on a standard photocopy machine. A provider may charge an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record. If the provider does not have the ability to reproduce X-rays or



other records requested, the person making the request may arrange, at his or her expense, for the reproduction of such records.

**Source:** Laws 1999, LB 17, § 4.

**71-8405 Charges; exemptions.**

(1) A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance under:

- (a) Sections 43-501 to 43-536 regarding assistance for certain children;
- (b) The Medical Assistance Act relating to the medical assistance program;
- (c) Title II of the federal Social Security Act, as amended, 42 U.S.C. 401 et seq.;
- (d) Title XVI of the federal Social Security Act, as amended, 42 U.S.C. 1382 et seq.; or
- (e) Title XVIII of the federal Social Security Act, as amended, 42 U.S.C. 1395 et seq.

(2) Unless otherwise provided by law, a provider may charge a fee as provided in section 71-8404 for the medical records of a patient requested by a state or federal agency in relation to the patient’s application for benefits or assistance or an appeal relating to denial of such benefits or assistance under subsection (1) of this section.

(3) A request for medical records under this section shall include a statement or document from the department or agency that administers the issuance of the assistance or benefits which confirms the application or appeal.

**Source:** Laws 1999, LB 17, § 5; Laws 2006, LB 1248, § 81.

**Cross References**

Medical Assistance Act, see section 68-901.

**71-8406 Provider; immunity.**

A provider who transfers or submits information in good faith to a patient’s medical record shall not be liable in damages to the patient or any other person for the disclosure of such medical records as provided in sections 71-8401 to 71-8407.

**Source:** Laws 1999, LB 17, § 6.

**71-8407 Sections; applicability.**

Sections 71-8401 to 71-8407 do not apply to the release of medical records under the Nebraska Workers’ Compensation Act.

**Source:** Laws 1999, LB 17, § 7.

**Cross References**

Nebraska Workers’ Compensation Act, see section 48-1,110.

ARTICLE 85

TELEHEALTH SERVICES

(a) NEBRASKA TELEHEALTH ACT

Section

- 71-8501. Act, how cited.
- 71-8502. Legislative findings.
- 71-8503. Terms, defined.
- 71-8504. Act; how construed.
- 71-8505. Written statement; requirements.
- 71-8506. Medical assistance program; reimbursement; requirements.
- 71-8507. Health care facility; duties.
- 71-8508. Rules and regulations.

(b) CHILDREN’S BEHAVIORAL HEALTH

- 71-8509. Telehealth services for children’s behavioral health; rules and regulations; terms, defined.
- 71-8510. Behavioral health screenings; legislative intent; optional screening.
- 71-8511. Behavioral Health Education Center; duties.
- 71-8512. Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.

(a) NEBRASKA TELEHEALTH ACT

**71-8501 Act, how cited.**

Sections 71-8501 to 71-8508 shall be known and may be cited as the Nebraska Telehealth Act.

**Source:** Laws 1999, LB 559, § 1.

**71-8502 Legislative findings.**

The Legislature finds that:

- (1) Access to health care facilities and health care practitioners is critically important to the citizens of Nebraska;
- (2) Access to a continuum of health care services is restricted in some medically underserved areas of Nebraska, and many health care practitioners in such areas are isolated from mentors, colleagues, and information resources necessary to support them personally and professionally;
- (3) The use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska; and
- (4) The full potential of delivering health care services through telehealth cannot be realized without the assurance of payment for such services and the resolution of existing legal and policy barriers to such payment.

**Source:** Laws 1999, LB 559, § 2.

**71-8503 Terms, defined.**

For purposes of the Nebraska Telehealth Act:

- (1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and telemonitoring;

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth; and

(5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage.

**Source:** Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1.

**71-8504 Act; how construed.**

The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.

**Source:** Laws 1999, LB 559, § 4.

**71-8505 Written statement; requirements.**

(1) Prior to an initial telehealth consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through telehealth shall ensure that the following written information is provided to the patient:

(a) A statement that the patient retains the option to refuse the telehealth consultation at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) A statement that all existing confidentiality protections shall apply to the telehealth consultation;

(c) A statement that the patient shall have access to all medical information resulting from the telehealth consultation as provided by law for patient access to his or her medical records; and

(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.

(2) The patient shall sign a written statement prior to an initial telehealth consultation, indicating that the patient understands the written information provided pursuant to subsection (1) of this section and that this information has

been discussed with the health care practitioner or his or her designee. Such signed statement shall become a part of the patient's medical record.

(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the written statement required by subsection (2) of this section, such statement shall be signed by the patient's legally authorized representative.

(4) This section shall not apply in an emergency situation in which the patient is unable to sign the written statement required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

**Source:** Laws 1999, LB 559, § 5.

#### **71-8506 Medical assistance program; reimbursement; requirements.**

(1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation, and the rate shall not depend on the distance between the health care practitioner and the patient.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an Internet service provider, between the patient and the physician or health care practitioner at the distant site which comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

**Source:** Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82; Laws 2013, LB556, § 6; Laws 2014, LB1076, § 2.

#### **Cross References**

**Medical Assistance Act**, see section 68-901.

#### **71-8507 Health care facility; duties.**

A health care facility licensed under the Health Care Facility Licensure Act that receives reimbursement under the Nebraska Telehealth Act for telehealth consultations shall establish quality of care protocols and patient confidentiality guidelines to ensure that such consultations meet the requirements of the act and acceptable patient care standards.

**Source:** Laws 1999, LB 559, § 7; Laws 2000, LB 819, § 147.

**Cross References**

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

**71-8508 Rules and regulations.**

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish necessary methods and procedures.

**Source:** Laws 1999, LB 559, § 8; Laws 2014, LB1076, § 3.

(b) CHILDREN'S BEHAVIORAL HEALTH

**71-8509 Telehealth services for children's behavioral health; rules and regulations; terms, defined.**

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations providing for telehealth services for children's behavioral health. Such rules and regulations relate specifically to children's behavioral health and are in addition to the Nebraska Telehealth Act.

For purposes of sections 71-8509 to 71-8512, child means a person under nineteen years of age.

(2) The rules and regulations required pursuant to subsection (1) of this section shall include, but not be limited to:

(a) An appropriately trained staff member or employee familiar with the child's treatment plan or familiar with the child shall be immediately available in person to the child receiving a telehealth behavioral health service in order to attend to any urgent situation or emergency that may occur during provision of such service. This requirement may be waived by the child's parent or legal guardian; and

(b) In cases in which there is a threat that the child may harm himself or herself or others, before an initial telehealth service the health care practitioner shall work with the child and his or her parent or guardian to develop a safety plan. Such plan shall document actions the child, the health care practitioner, and the parent or guardian will take in the event of an emergency or urgent situation occurring during or after the telehealth session. Such plan may include having a staff member or employee familiar with the child's treatment plan immediately available in person to the child, if such measures are deemed necessary by the team developing the safety plan.

**Source:** Laws 2013, LB556, § 1; Laws 2017, LB92, § 2.

**Cross References**

Nebraska Telehealth Act, see section 71-8501.

**71-8510 Behavioral health screenings; legislative intent; optional screening.**

It is the intent of the Legislature that behavioral health screenings be offered by physicians at the time of childhood physicals. The physician shall explain that such screening is optional. The results of behavioral health screenings and any related documents shall not be included in the child's school record and shall not be provided to the child's school or to any other person or entity without the express consent of the child's parent or legal guardian.

**Source:** Laws 2013, LB556, § 2.

**71-8511 Behavioral Health Education Center; duties.**

The Behavioral Health Education Center created pursuant to section 71-830 shall provide education and training for educators on children's behavioral health in the areas of the state served by the Behavioral Health Screening and Referral Pilot Program created pursuant to section 71-8512.

**Source:** Laws 2013, LB556, § 3.

**71-8512 Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.**

(1) The University of Nebraska Medical Center shall create the Behavioral Health Screening and Referral Pilot Program. The pilot program shall utilize a strategy of screening and behavioral health intervention in coordination with the regional behavioral health authorities established pursuant to section 71-808 in which the clinics identified under subsection (2) of this section are located. It is the intent of the Legislature that the pilot program demonstrate a method of addressing the unmet emotional or behavioral health needs of children that can be replicated statewide. Under the pilot program, behavioral health screening will be offered: (a) In primary care providers' offices during examinations under the early and periodic screening, diagnosis, and treatment services program pursuant to 42 U.S.C. 1396d(r), as such section existed on January 1, 2013; or (b) upon request from parents or legal guardians who have concerns about a child's behavioral health.

(2) Three clinics shall be selected to serve as sites for the pilot program, including at least one rural and one urban clinic. Selected clinics shall have child psychologists integrated in the pediatric practice of the clinics. Parents or legal guardians of children participating in the pilot program shall be offered routine mental and behavioral health screening for their child during required physical examinations or at the request of a parent or legal guardian. Behavioral health screening shall be administered by clinic staff and interpreted by the psychiatrist, psychiatric nurse practitioner, psychologist, or licensed mental health practitioner and the child's primary care physician.

(3) Children identified through such screenings as being at risk may be referred for further evaluation and diagnosis as indicated. If intervention is required, the primary care medical team, including the psychologist and the primary care physician, shall develop a treatment plan collaboratively with the parent or legal guardian and any other individuals identified by the parent or legal guardian. If appropriate, the child shall receive behavioral therapy, medication, or combination therapy within the primary care practice setting.

(4) Consultation via telephone or telehealth with faculty and staff of the departments of Child and Adolescent Psychiatry, Psychiatric Nursing, and Developmental Pediatrics, and the Munroe-Meyer Institute Psychology Depart-

ment, of the University of Nebraska Medical Center shall be available to the primary care practice and the children as needed to manage the care of children with mental or behavioral health issues that require more specialized care than can be provided by the primary care practice.

(5) Data on the pilot program shall be collected and evaluated by the Interdisciplinary Center for Program Evaluation at the Munroe-Meyer Institute of the University of Nebraska Medical Center. Evaluation of the pilot program shall include, but not be limited to:

(a) The number of referrals for behavioral health screening under the pilot program;

(b) Whether each referral is initiated by a parent, a school, or a physician;

(c) The number of children and adolescents recommended for further psychological assessment after screening for a possible behavioral health disorder;

(d) The number and type of further psychological assessments of children and adolescents recommended and conducted;

(e) The number and type of behavioral health disorders in children and adolescents diagnosed as a result of a further psychological assessment following a behavioral health screening under the pilot program;

(f) The number and types of referrals of children and adolescents for behavioral health treatment from primary care medical practitioners;

(g) The number of children and adolescents successfully treated for a behavioral health disorder based upon patient reports, parent ratings, and academic records;

(h) The number and type of referrals of children and adolescents to psychiatric backup services at the University of Nebraska Medical Center;

(i) The number of children and adolescents diagnosed with a behavioral health disorder who are successfully managed or treated through psychiatric backup services from the University of Nebraska Medical Center;

(j) The number and types of medications, consultations, or prescriptions ordered by psychiatric nurse practitioners for children and adolescents;

(k) The number of referrals of children and adolescents for severe behavioral health disorders and consultations to child psychiatrists, developmental pediatricians, or psychologists specializing in treatment of adolescents;

(l) The number of children and adolescents referred to psychiatric hospitals or emergency departments of acute care hospitals for treatment for dangerous or suicidal behavior;

(m) The number of children and adolescents prescribed psychotropic medications and the types of such psychotropic medications; and

(n) Data collection on program costs and financial impact as related to capacity for replication in other primary care practices. Primary program costs include physician and psychologist time for conducting screenings, family interviews, further testing, and specialist consulting costs relating to consulting services by psychiatric nurses, developmental pediatricians, and psychologists. Treatment or medications paid by private insurance, the medical assistance program, or the State Children's Health Insurance Program shall not be included in program costs pursuant to this subdivision.

(6) This section terminates two years after September 6, 2015.

**Source:** Laws 2013, LB556, § 4; Laws 2015, LB240, § 1.

## ARTICLE 86

### BLIND AND VISUALLY IMPAIRED

Section	
71-8601.	Act, how cited.
71-8602.	Purposes of act.
71-8603.	Terms, defined.
71-8604.	Commission for the Blind and Visually Impaired; created; per diem; expenses.
71-8605.	Commission; director; employees.
71-8606.	Repealed. Laws 2002, LB 93, § 27.
71-8607.	Commission; powers and duties.
71-8608.	Promotion of self-support; powers and duties.
71-8609.	Blindness-related services; qualifications; commission; duties.
71-8610.	Vocational rehabilitation services.
71-8610.01.	Certified vocational rehabilitation counselor for the blind; duties.
71-8610.02.	Vocational rehabilitation counseling for the blind; certified vocational rehabilitation counselor for the blind; certification required; qualifications; continuing competency requirements.
71-8611.	Vending facilities; license; priority status.
71-8612.	Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.
71-8613.	Annual report.
71-8614.	Hearing authorized.
71-8615.	Rules and regulations.
71-8616.	Transfer of property to commission; contracts and agreements; effect.

#### 71-8601 Act, how cited.

Sections 71-8601 to 71-8616 shall be known and may be cited as the Commission for the Blind and Visually Impaired Act.

**Source:** Laws 2000, LB 352, § 1; Laws 2007, LB445, § 1.

#### 71-8602 Purposes of act.

The purposes of the Commission for the Blind and Visually Impaired Act are to assist blind persons in gaining remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

**Source:** Laws 2000, LB 352, § 2.

#### 71-8603 Terms, defined.

For purposes of the Commission for the Blind and Visually Impaired Act:

(1) Blind person means:

(a) A person having sight which is so defective as to seriously limit his or her ability to engage in the ordinary vocations and activities of life; or

(b) A person, to be eligible and licensed as a blind vending facility operator under section 71-8611:

(i) Having no greater than 20/200 central visual acuity in the better eye after correction; or



- (ii) Having an equally disabling loss of the visual field in which the widest diameter of the visual field subtends an angle no greater than twenty degrees;
- (2) Board means the governing board of the commission;
- (3) Certified vocational rehabilitation counselor for the blind means a person who is certified to practice vocational rehabilitation counseling for blind persons and holds a certificate issued by the commission;
- (4) Commission means the Commission for the Blind and Visually Impaired;
- (5) Committee of Blind Vendors means the committee created pursuant to 20 U.S.C. 107b-1;
- (6) State workforce investment board means the board authorized by the federal Workforce Investment Act of 1998 and established in Nebraska;
- (7) Vending facility means:
  - (a) Cafeterias, snackbars, cart services, shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of articles approved by the office, agency, or person having control of the property on which the vending facility is located; and
  - (b) Manual or coin-operated vending machines or similar devices for vending articles approved by the office, agency, or person having control of the property on which the vending facility is located;
- (8) Vending facility program means the program established and maintained pursuant to section 71-8611; and
- (9) Vocational rehabilitation counseling for the blind means the process implemented by a person who operates a comprehensive and coordinated program designed to assist blind persons to gain remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

**Source:** Laws 2000, LB 352, § 3; Laws 2005, LB 55, § 1; Laws 2007, LB445, § 2.

**71-8604 Commission for the Blind and Visually Impaired; created; per diem; expenses.**

(1) The Commission for the Blind and Visually Impaired is created. The governing board of the commission shall consist of five members appointed by the Governor with the approval of a majority of the members of the Legislature. All board members shall have reasonable knowledge or experience in issues related to blindness which may include, but is not limited to, reasonable knowledge or experience acquired through membership in consumer organizations of the blind. No board member or his or her immediate family shall be a current employee of the commission. At least three board members shall be blind persons: One member shall be a member or designee of the National Federation of the Blind of Nebraska; one member shall be a member or designee of the American Council of the Blind of Nebraska; and one member may be a member of another consumer organization of the blind.

(2) Board members shall be appointed for staggered terms with the initial members appointed for terms as follows: Two members for terms ending on December 31, 2001, and three members for terms ending December 31, 2003.

Subsequent appointments shall be for terms of four years with no board member appointed to more than two consecutive terms. Board members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Board members may be removed for cause.

(3) A majority of the board members constitutes a quorum for the transaction of business. The board shall annually elect a chairperson from its membership.

(4) Board members shall receive a per diem of seventy dollars for each day spent in the performance of their official duties and shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. Aside from the provisions of this subsection, a board member shall not receive other compensation, perquisites, or allowances for the performance of official duties.

**Source:** Laws 2000, LB 352, § 4.

**71-8605 Commission; director; employees.**

(1) The commission shall employ a director who is the administrative officer of the commission. The director shall hire employees as necessary for the efficient operation of the commission. The director shall serve at the pleasure of the commission.

(2) The commission shall have power in each instance (a) to establish standards of qualification for personnel employed pursuant to the Commission for the Blind and Visually Impaired Act and (b) to employ necessary field agents, teachers, and other personnel in accordance with such standards and fix their compensation. All employees of the commission, except the director, shall be included within the State Personnel System.

**Source:** Laws 1917, c. 233, § 3, p. 571; C.S.1922, § 6876; C.S.1929, § 83-313; R.S.1943, § 83-211; Laws 1947, c. 332, § 3, p. 1050; Laws 1976, LB 674, § 6; Laws 1988, LB 810, § 1; Laws 1996, LB 1044, § 934; R.S.1943, (1999), § 83-211; Laws 2000, LB 352, § 5.

**71-8606 Repealed. Laws 2002, LB 93, § 27.**

**71-8607 Commission; powers and duties.**

(1) The commission shall:

(a) Apply for, receive, and administer money from any state or federal agency to be used for purposes relating to blindness, including federal funds relating to vocational rehabilitation of blind persons as provided in subsection (1) of section 71-8610;

(b) Receive on behalf of the state any gifts, donations, or bequests from any source to be used in carrying out the purposes of the Commission for the Blind and Visually Impaired Act;

(c) Promote self-support of blind persons as provided in sections 71-8608, 71-8609, and 71-8611;

(d) Provide itinerant training of alternative skills of blindness, including, but not limited to, braille, the long white cane for independent travel, adaptive technology, and lifestyle maintenance;

(e) Establish, equip, and maintain a residential training center with qualified instructors for comprehensive prevocational training of eligible blind persons. The center shall also provide comprehensive independent living training as well as orientation and adjustment counseling for blind persons;

(f) Administer and operate a vending facility program in the state, in its capacity as the designated licensing agency pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq., for the benefit of blind persons;

(g) Contract for the purchase of information services for blind persons; and

(h) Perform other duties necessary to fulfill the purposes of the Commission for the Blind and Visually Impaired Act.

(2) The commission may perform educational services relating to blindness and may cooperate and consult with other public and private agencies relating to educational issues.

**Source:** Laws 2000, LB 352, § 7.

**71-8608 Promotion of self-support; powers and duties.**

To promote self-support of blind persons:

(1) The commission shall:

(a) Provide placement and career development services;

(b) Provide prevocational training;

(c) Support integration with and access to community-based educational and vocational training opportunities;

(d) Implement employer outreach and cultivation; and

(e) Develop inservice community-based recruitment and networking resources; and

(2) The commission may:

(a) Maintain employment data bases;

(b) Facilitate small business incubation; and

(c) Develop recommendations for state contract preferences.

**Source:** Laws 2000, LB 352, § 8.

**71-8609 Blindness-related services; qualifications; commission; duties.**

(1) For a person to qualify for blindness-related services from the commission, the commission shall find such person to be (a) a blind person as defined in subdivision (1)(a) of section 71-8603 or (b) a person who is experiencing a deteriorating condition which is expected to result in blindness. A person seeking to qualify for blindness-related services may obtain an eye examination from a licensed ophthalmologist or optometrist of his or her choice or provide other certifying evidence of existing or potential visual impairment as required by the rules and regulations of the commission.

(2) The commission shall maintain a list of all ophthalmologists and optometrists currently licensed in Nebraska and establish procedures for a person to obtain evidence to verify that he or she qualifies for blindness-related services.

(3) When an eye examination is required for a person seeking to qualify for blindness-related services, the commission shall pay the cost pursuant to its

rules and regulations. The commission may assist any person seeking to qualify for blindness-related services under the Commission for the Blind and Visually Impaired Act in arranging an eye examination or obtaining other evidence pursuant to this section.

**Source:** Laws 2000, LB 352, § 9.

**71-8610 Vocational rehabilitation services.**

(1) The commission is authorized to accept the provisions of the federal Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq., and to cooperate with the United States Government in any way necessary to enable the commission to receive federal funds for the vocational rehabilitation of blind persons as provided in such act and the provisions of Titles II and XVI of the federal Social Security Act, as amended, 42 U.S.C. 301 et seq.

(2) The commission shall provide vocational rehabilitation services for blind persons, including, but not limited to, prevocational training, maintenance during training, transportation, occupational tools and equipment, vocational training, medical and surgical care and hospitalization, and prosthetic appliances.

**Source:** Laws 1947, c. 332, § 2, p. 1050; Laws 1976, LB 674, § 2; Laws 1979, LB 124, § 1; Laws 1981, LB 336, § 1; Laws 1996, LB 1044, § 928; R.S.1943, (1999), § 83-210.02; Laws 2000, LB 352, § 10.

**71-8610.01 Certified vocational rehabilitation counselor for the blind; duties.**

A certified vocational rehabilitation counselor for the blind's duties shall include, but not be limited to, the following:

(1) Assist blind persons, their families, groups of blind persons, or employers of blind persons through the counseling relationship to develop understanding, define blindness issues, define goals, plan action, and elevate expectations toward the capability of blind persons with the goal of full-time or part-time employment when appropriate, consistent with each individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) Be responsible for all decisions concerning eligibility for services, the nature and scope of available services, the provision of services, and the determination that a recipient of such services has achieved an employment outcome commensurate with his or her strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) Administer the individualized plan for employment and write the document prepared on forms provided by the commission containing descriptions of a specific employment outcome, the nature and scope of needed services and the entities to provide them, the criteria to evaluate progress toward achievement of employment outcome, and the responsibilities of the program and the recipient of such services;

(4) Plan allocation and expenditure of program funds; and

(5) Complete referral activities which evaluate data to identify which blind persons or groups of blind persons may be served in conjunction with or by other counselors.

**Source:** Laws 2007, LB445, § 3.

**71-8610.02 Vocational rehabilitation counseling for the blind; certified vocational rehabilitation counselor for the blind; certification required; qualifications; continuing competency requirements.**

(1) No person shall engage in vocational rehabilitation counseling for the blind or hold himself or herself out as a certified vocational rehabilitation counselor for the blind in the state unless he or she is certified for such purpose by the commission.

(2) A certified vocational rehabilitation counselor for the blind is not a mental health practitioner.

(3) Except as otherwise provided in subsection (5) of this section, a certified vocational rehabilitation counselor for the blind shall have the following qualifications:

(a) A bachelor's degree from an appropriate educational program approved by the executive director of the commission;

(b) Six hundred hours of intensive training under supervision at the commission's orientation training center; and

(c) Completion of appropriate training as approved by the executive director.

(4) Each certified vocational rehabilitation counselor for the blind shall, in the period since his or her certificate was issued or last renewed, complete continuing competency requirements as set forth by the commission under the executive director's approval.

(5) The commission may waive some or all of the requirements of subsection (3) of this section for any person engaged in rehabilitation counseling for the blind on or before September 1, 2007.

**Source:** Laws 2007, LB445, § 4.

**71-8611 Vending facilities; license; priority status.**

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of blind persons, and stimulating blind persons to greater efforts in striving to make themselves self-supporting, the commission shall administer and operate vending facilities programs pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq. Blind persons licensed by the commission pursuant to its rules and regulations are authorized to operate vending facilities in any federally owned building or on any federally owned or controlled property, in any state-owned building or on any property owned or controlled by the state, or on any property owned or controlled by any county, city, or municipality with the approval of the local governing body, when, in the judgment of the director of the commission, such vending facilities may be properly and satisfactorily operated by blind persons. With respect to vending facilities in any state-owned building or on any property owned or controlled by the state, priority shall be given to blind persons, except that this shall not apply to the Game and Parks Commission or the University of Nebraska. This priority shall only be given if the product price in the bid submitted is comparable in price to the product price in the other bids submitted for similar products sold in similar buildings or on similar

property and all other components of the bid for a contract, except for any rent paid to the state, are found to be reasonably equivalent to the other bidders.

**Source:** Laws 1961, c. 443, § 1, p. 1363; Laws 1973, LB 32, § 1; Laws 1976, LB 674, § 3; Laws 1996, LB 1044, § 929; R.S.1943, (1999), § 83-210.03; Laws 2000, LB 352, § 11; Laws 2004, LB 1005, § 134; Laws 2012, LB858, § 4.

**71-8612 Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.**

The Commission for the Blind and Visually Impaired Cash Fund is created. The fund shall contain money received pursuant to the Commission for the Blind and Visually Impaired Act and shall include a percentage of the net proceeds derived from the operation of vending facilities. The net proceeds from the operation of vending facilities shall accrue to the blind vending facility operator, except for the percentage of the net proceeds that shall revert to the cash fund. Such fund shall be used for supervision and other administrative purposes as necessary, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that reverts to the Commission for the Blind and Visually Impaired Cash Fund after an investigation to reveal the gross proceeds, cost of operation, amount necessary to replenish the stock of merchandise, and the business needs of the blind vending facility operator. All equipment purchased from the fund is the property of the state and shall be disposed of only by sale at a fair market price. 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 1947, c. 343, § 1, p. 1085; Laws 1949, c. 292, § 1, p. 996; Laws 1957, c. 386, § 1, p. 1343; Laws 1961, c. 442, § 1, p. 1362; Laws 1965, c. 561, § 1, p. 1845; Laws 1969, c. 584, § 113, p. 2418; Laws 1971, LB 334, § 6; Laws 1976, LB 674, § 1; Laws 1995, LB 7, § 142; R.S.1943, (1999), § 83-210.01; Laws 2000, LB 352, § 12; Laws 2005, LB 55, § 2; Laws 2009, First Spec. Sess., LB3, § 48.

**Cross References**

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

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

**71-8613 Annual report.**

The commission shall file an annual report with the Governor and the Clerk of the Legislature, prior to each regular session of the Legislature, which details the activities and expenditures of the commission and shall include separately information related to the activities and expenditures of the vending facility program as well as estimates of anticipated expenditures and anticipated revenue available to the vending facility program from all sources. The report submitted to the Clerk of the Legislature shall be submitted electronically.

**Source:** Laws 2000, LB 352, § 13; Laws 2012, LB782, § 127.

**71-8614 Hearing authorized.**

The commission shall provide an opportunity for a fair hearing to any person applying for or receiving services who is dissatisfied with any action or failure to act arising from the operation or administration of any service or program authorized under the Commission for the Blind and Visually Impaired Act.

**Source:** Laws 2000, LB 352, § 14.

**71-8615 Rules and regulations.**

The commission shall adopt and promulgate rules and regulations as necessary to implement the purposes of the Commission for the Blind and Visually Impaired Act.

**Source:** Laws 2000, LB 352, § 15.

**71-8616 Transfer of property to commission; contracts and agreements; effect.**

(1) All property, equipment, supplies, and personnel which belonged to, were allocated to, or were used to support the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services prior to July 1, 2000, are transferred to the Commission for the Blind and Visually Impaired.

(2) All existing contracts and agreements in effect on July 1, 2000, as to the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services are binding and effective upon the Commission for the Blind and Visually Impaired.

**Source:** Laws 2000, LB 352, § 16.

**ARTICLE 87**

**PATIENT SAFETY IMPROVEMENT ACT**

Section

- 71-8701. Act, how cited.
- 71-8702. Legislative findings and intent.
- 71-8703. Purposes of act.
- 71-8704. Definitions, where found.
- 71-8705. Identifiable information, defined.
- 71-8706. Nonidentifiable information, defined.
- 71-8707. Patient safety organization, defined.
- 71-8708. Patient safety work product, defined.
- 71-8709. Provider, defined.
- 71-8710. Patient safety work product; confidentiality; use; restrictions.
- 71-8711. Patient safety organization; proceedings and records; restrictions on use; violation; penalty.
- 71-8712. Patient safety work product; unlawful use; effect.
- 71-8713. Act; cumulative to other law.
- 71-8714. Patient safety organization; conditions.
- 71-8715. Patient safety organization; board of directors; membership.
- 71-8716. Election to be subject to act; contract; requirements.
- 71-8717. Reportable patient safety events; provider; duties.
- 71-8718. Reporting requirements.
- 71-8719. Nonidentifiable information; disclosure.
- 71-8720. Public disclosure of data and information.
- 71-8721. Immunity from liability.

**71-8701 Act, how cited.**

Sections 71-8701 to 71-8721 shall be known and may be cited as the Patient Safety Improvement Act.

**Source:** Laws 2005, LB 361, § 1.

**71-8702 Legislative findings and intent.**

(1) The Legislature finds that:

(a) In 1999, the Institute of Medicine released a report entitled “To Err is Human” that described medical errors as the eighth leading cause of death in the United States;

(b) To address these errors, the health care system must be able to create a learning environment in which health care providers and facilities will feel safe reporting adverse health events and near misses in order to improve patient safety;

(c) To facilitate the learning environment, health care providers and facilities must have legal protections that will allow them to review protected health information so that they may collaborate in the development and implementation of patient safety improvement strategies;

(d) To carry out a program to promote patient safety, a policy should be established which provides for and promotes patient safety organizations; and

(e) There are advantages to having private nonprofit corporations act as patient safety organizations rather than a state agency, including the enhanced ability to obtain grants and donations to carry out patient safety improvement programs.

(2) It is the intent of the Legislature to encourage the establishment of broad-based patient safety organizations.

**Source:** Laws 2005, LB 361, § 2.

**71-8703 Purposes of act.**

The purposes of the Patient Safety Improvement Act are to (1) encourage a culture of safety and quality by providing for legal protection of information reported for the purposes of quality improvement and patient safety, (2) provide for the reporting of aggregate information about occurrences, and (3) provide for the reporting and sharing of information designed to improve health care delivery systems and reduce the incidence of adverse health events and near misses. The ultimate goal of the act is to ensure the safety of all individuals who seek health care in Nebraska’s health care facilities or from Nebraska’s health care professionals.

**Source:** Laws 2005, LB 361, § 3.

**71-8704 Definitions, where found.**

For purposes of the Patient Safety Improvement Act, unless the context otherwise requires, the definitions found in sections 71-8705 to 71-8709 apply.

**Source:** Laws 2005, LB 361, § 4.

**71-8705 Identifiable information, defined.**

Identifiable information means information that is presented in a form and manner that allows the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information includes any individually identifiable health information as that term is defined in the regulations promulgated pursuant to section 264(c) of the Health Insurance



Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on April 28, 2005.

**Source:** Laws 2005, LB 361, § 5.

**71-8706 Nonidentifiable information, defined.**

Nonidentifiable information means information presented in a form and manner that prevents the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information must be de-identified consistent with the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on April 28, 2005.

**Source:** Laws 2005, LB 361, § 6.

**71-8707 Patient safety organization, defined.**

Patient safety organization means an organization described in section 71-8714 that contracts with one or more providers subject to the Patient Safety Improvement Act and that performs the following activities:

- (1) The conduct, as the organization's primary activity, of efforts to improve patient safety and the quality of health care delivery;
- (2) The collection and analysis of patient safety work product that is submitted by providers;
- (3) The development and dissemination of evidence-based information to providers with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices;
- (4) The utilization of patient safety work product to carry out activities limited to those described under this section and for the purposes of encouraging a culture of safety and of providing direct feedback and assistance to providers to effectively minimize patient risk;
- (5) The maintenance of confidentiality with respect to identifiable information;
- (6) The provision of appropriate security measures with respect to patient safety work product; and
- (7) The possible submission, if authorized by federal law, of nonidentifiable information to a national patient safety data base.

**Source:** Laws 2005, LB 361, § 7.

**71-8708 Patient safety work product, defined.**

- (1) Patient safety work product means any data, reports, records, memoranda, analyses, deliberative work, statements, root cause analyses, or quality improvement processes that are:
  - (a) Created or developed by a provider solely for the purposes of reporting to a patient safety organization;
  - (b) Reported to a patient safety organization for patient safety or quality improvement processes;
  - (c) Requested by a patient safety organization, including the contents of such request;
  - (d) Reported to a provider by a patient safety organization;

(e) Created by a provider to evaluate corrective actions following a report by or to a patient safety organization;

(f) Created or developed by a patient safety organization; or

(g) Reported among patient safety organizations after obtaining authorization.

(2) Patient safety work product does not include information, documents, or records otherwise available from original sources merely because they were collected for or submitted to a patient safety organization. Patient safety work product also does not include documents, investigations, records, or reports otherwise required by law.

(3) Patient safety work product does not include reports and information disclosed pursuant to sections 71-8719 and 71-8720.

**Source:** Laws 2005, LB 361, § 8.

**71-8709 Provider, defined.**

Provider means a person that is either:

(1) A facility licensed under the Health Care Facility Licensure Act; or

(2) A health care professional licensed under the Uniform Credentialing Act.

**Source:** Laws 2005, LB 361, § 9; Laws 2007, LB463, § 1307.

**Cross References**

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

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

**71-8710 Patient safety work product; confidentiality; use; restrictions.**

(1) Patient safety work product shall be privileged and confidential.

(2) Patient safety work product shall not be:

(a) Subject to a civil, criminal, or administrative subpoena or order;

(b) Subject to discovery in connection with a civil, criminal, or administrative proceeding;

(c) Subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552, as such act existed on April 28, 2005, or any other similar federal or state law, including sections 84-712 to 84-712.09;

(d) Offered in the presence of the jury or other factfinder or received into evidence in any civil, criminal, or administrative proceeding before any local, state, or federal tribunal; or

(e) If the patient safety work product is identifiable information and is received by a national accreditation organization in its capacity:

(i) Used by a national accreditation organization in an accreditation action against the provider that reported the information;

(ii) Shared by such organization with its survey team; or

(iii) Required as a condition of accreditation by a national accreditation organization.

**Source:** Laws 2005, LB 361, § 10.

**71-8711 Patient safety organization; proceedings and records; restrictions on use; violation; penalty.**

No person shall disclose the actions, decisions, proceedings, discussions, or deliberations occurring at a meeting of a patient safety organization except to the extent necessary to carry out one or more of the purposes of a patient safety organization. The proceedings and records of a patient safety organization shall not be subject to discovery or introduction into evidence in any civil action against a provider arising out of the matter or matters that are the subject of consideration by a patient safety organization. Information, documents, or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a patient safety organization. This section shall not be construed to prevent a person from testifying to or reporting information obtained independently of the activities of a patient safety organization or which is public information. A person who knowingly violates this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 2005, LB 361, § 11.

**71-8712 Patient safety work product; unlawful use; effect.**

Any reference to, or offer into evidence in the presence of the jury or other factfinder or admission into evidence of, patient safety work product during any proceeding contrary to the Patient Safety Improvement Act shall constitute grounds for a mistrial or a similar termination of the proceeding and reversible error on appeal from any judgment or order entered in favor of any party who discloses or offers into evidence patient safety work product in violation of the act.

**Source:** Laws 2005, LB 361, § 12.

**71-8713 Act; cumulative to other law.**

The prohibition in the Patient Safety Improvement Act against discovery, disclosure, or admission into evidence of patient safety work product is in addition to any other protections provided by law.

**Source:** Laws 2005, LB 361, § 13.

**71-8714 Patient safety organization; conditions.**

A patient safety organization shall meet the following conditions:

- (1) It shall be a Nebraska nonprofit corporation described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, contributions to which are deductible under section 170 of the code;
- (2) The purposes of the organization shall include carrying out the activities of a patient safety organization as described in the Patient Safety Improvement Act; and
- (3) It shall have a representative board of directors as described in section 71-8715.

**Source:** Laws 2005, LB 361, § 14.

**71-8715 Patient safety organization; board of directors; membership.**

The board of directors of a patient safety organization shall include at least one representative each from a statewide association of Nebraska hospitals, Nebraska physicians and surgeons, Nebraska nurses, Nebraska pharmacists,

and Nebraska physician assistants as recommended by such associations. At least one consumer shall be a member of the board. The board shall consist of at least twelve but no more than fifteen members as established at the discretion of the board.

**Source:** Laws 2005, LB 361, § 15.

**71-8716 Election to be subject to act; contract; requirements.**

(1) A patient safety organization shall contract with providers that elect to be subject to the Patient Safety Improvement Act. The patient safety organization shall establish a formula for determining fees and assessments uniformly within categories of providers.

(2) A provider may elect to be subject to the Patient Safety Improvement Act by contracting with a patient safety organization to make reports as described in the act.

**Source:** Laws 2005, LB 361, § 16.

**71-8717 Reportable patient safety events; provider; duties.**

(1) Every provider subject to the Patient Safety Improvement Act shall track and report pursuant to section 71-8718 the following occurrences of patient safety events:

(a) Surgery or procedures performed on the wrong patient or the wrong body part of a patient;

(b) Foreign object accidentally left in a patient during a procedure or surgery;

(c) Hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(d) Sexual assault of a patient during treatment or while the patient was on the premises of a facility;

(e) Abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(f) Suicide of a patient in a setting in which the patient received care twenty-four hours a day;

(g) Medication error resulting in a patient's unanticipated death or permanent or temporary loss of bodily function, including (i) treatment intervention, temporary harm, (ii) initial-prolonged hospitalization, temporary harm, (iii) permanent patient harm, and (iv) near death event in circumstances unrelated to the natural course of the illness or underlying condition of the patient, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong rate, the wrong preparation, or the wrong route of administration, but excluding reasonable differences in clinical judgment on drug selection and dose;

(h) Patient death or serious disability associated with the use of adulterated drugs, devices, or biologics provided by the provider;

(i) Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended; and

(j) Unanticipated death or major permanent loss of function associated with health care associated nosocomial infection.

(2) A patient safety organization, based on a review of new indicators of patient safety events identified by the Joint Commission on Accreditation of Healthcare Organizations, shall recommend changes, additions, or deletions to the list of reportable patient safety events, which changes, additions, or deletions shall be binding on the providers. Providers may voluntarily report any other patient safety events not otherwise identified.

**Source:** Laws 2005, LB 361, § 17.

#### **71-8718 Reporting requirements.**

(1) Every provider subject to the Patient Safety Improvement Act shall report aggregate numbers of occurrences for each patient safety event category listed in section 71-8717 to a patient safety organization. Reporting shall be done on an annual basis by March 31 for the prior calendar year.

(2) For each occurrence listed in section 71-8717, a root cause analysis shall be completed and an action plan developed within forty-five days after such occurrence. The action plan shall (a) identify changes that can be implemented to reduce risk of the patient safety event occurring again or formulate a rationale for not implementing change and (b) if an improvement action is planned, identify who is responsible for implementation, when the action will be implemented, and how the effectiveness of the action will be evaluated. The provider shall, within thirty days after the development of an action plan, provide a summary report to a patient safety organization which includes a brief description of the patient safety event, a brief description of the root cause analysis, and a description of the action plan steps.

(3) The facility where a reportable event occurred shall be responsible for coordinating the reporting of information required under the Patient Safety Improvement Act and ensuring that the required reporting is completed, and such coordination satisfies the obligation of reporting imposed on each individual provider under the act.

**Source:** Laws 2005, LB 361, § 18.

#### **71-8719 Nonidentifiable information; disclosure.**

A patient safety organization may disclose nonidentifiable information, including nonidentifiable aggregate trend data and educational material developed as a result of the patient safety work product reported to it.

**Source:** Laws 2005, LB 361, § 19.

#### **71-8720 Public disclosure of data and information.**

A patient safety organization shall release to the public nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. A patient safety organization shall publish educational and evidence-based information from the summary reports, which shall be available to the public, that can be used by all providers to improve the care they provide.

**Source:** Laws 2005, LB 361, § 20.

#### **71-8721 Immunity from liability.**

Any person who receives or releases information in the form and manner prescribed by the Patient Safety Improvement Act and the procedures established by a patient safety organization shall not be civilly or criminally liable for such receipt or release unless the receipt or release is done with actual malice, fraudulent intent, or bad faith. A patient safety organization shall not be liable civilly for the release of nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. Because the candid and conscientious evaluation of patient safety events is essential to the improvement of medical care and to encourage improvements in patient safety, any provider furnishing services to a patient safety organization shall not be liable for civil damages as a result of such acts, omissions, decisions, or other such conduct in connection with the duties on behalf of a patient safety organization if done pursuant to the Patient Safety Improvement Act except for acts done with actual malice, fraudulent intent, or bad faith.

**Source:** Laws 2005, LB 361, § 21.

## ARTICLE 88

### STEM CELL RESEARCH ACT

#### Section

- 71-8801. Act, how cited.
- 71-8802. Terms, defined.
- 71-8803. Stem Cell Research Advisory Committee; created; qualifications; terms; meetings; stipend; expenses.
- 71-8804. Committee; establish grant process; reports.
- 71-8805. Stem Cell Research Program; created.
- 71-8806. Limitation on use of facilities and funds.

#### **71-8801 Act, how cited.**

Sections 71-8801 to 71-8806 shall be known and may be cited as the Stem Cell Research Act.

**Source:** Laws 2008, LB606, § 1.

#### **71-8802 Terms, defined.**

For purposes of the Stem Cell Research Act:

- (1) Committee means the Stem Cell Research Advisory Committee;
- (2) Human embryo means the developing human organism from the time of fertilization until the end of the eighth week of gestation and includes an embryo or developing human organism created by somatic cell nuclear transfer; and
- (3) Somatic cell nuclear transfer means a technique in which the nucleus of an oocyte is replaced with the nucleus of a somatic cell.

**Source:** Laws 2008, LB606, § 2.

#### **71-8803 Stem Cell Research Advisory Committee; created; qualifications; terms; meetings; stipend; expenses.**

(1) The Stem Cell Research Advisory Committee is created. The committee shall consist of the dean of every medical school in Nebraska that is accredited by the Liaison Committee on Medical Education or his or her designee and additional members appointed as follows: (a) The dean of every medical school in Nebraska shall nominate three scientists from outside Nebraska conducting

human stem cell research with funding from the National Institutes of Health of the United States Department of Health and Human Services; and (b) the chief medical officer as designated in section 81-3115 shall select two of such scientists from each set of nominations to serve on the committee. Appointments by the chief medical officer pursuant to this subsection shall be approved by the Legislature. Members appointed by the chief medical officer shall serve for staggered terms of three years each and until their successors are appointed and qualified. Such members may be reappointed for additional three-year terms.

(2) The committee shall meet not less than twice each year.

(3) Members of the committee not employed by medical schools in Nebraska shall receive a stipend per meeting to be determined by the Division of Public Health of the Department of Health and Human Services based on standard consultation fees, and all members of the committee shall be reimbursed for their actual and necessary expenses incurred in service on the committee pursuant to sections 81-1174 to 81-1177.

**Source:** Laws 2008, LB606, § 3.

**71-8804 Committee; establish grant process; reports.**

(1) The committee shall establish a grant process to award grants to Nebraska institutions or researchers for the purpose of conducting nonembryonic stem cell research. The grant process shall include, but not be limited to, an application identifying the institution or researcher applying for the grant, the amount of funds to be received by the applicant from sources other than state funds, the sources of such funds, and a description of the goal of the research for which the funds will be used and research methods to be used by the applicant.

(2) The committee shall submit electronically an annual report to the Legislature stating the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded.

**Source:** Laws 2008, LB606, § 4; Laws 2012, LB782, § 128.

**71-8805 Stem Cell Research Program; created.**

(1) The Stem Cell Research Program is created.

(2) Any money appropriated by the Legislature for the Stem Cell Research Program shall be used to provide a dollar-for-dollar match, up to five hundred thousand dollars per fiscal year, of funds received by institutions or researchers from sources other than funds provided by the State of Nebraska for nonembryonic stem cell research. Such matching funds shall be awarded through the grant process established pursuant to section 71-8804. No single institution or researcher shall receive more than seventy percent of the funds available for distribution under this section on an annual basis.

(3) Up to three percent of any annual appropriation for the Stem Cell Research Program shall be available to the Division of Public Health of the Department of Health and Human Services for administrative costs, including stipends and reimbursements pursuant to section 71-8803.

(4) The State Treasurer shall transfer, on July 1, 2016, the unobligated balance in the Stem Cell Research Cash Fund to the Nebraska Health Care Cash Fund.

**Source:** Laws 2008, LB606, § 5; Laws 2009, LB316, § 20; Laws 2012, LB969, § 10; Laws 2016, LB957, § 6.

**71-8806 Limitation on use of facilities and funds.**

No state facilities, no state funds, fees, or charges, and no investment income on state funds shall be used to destroy human embryos for the purpose of research. In no case shall state facilities, state funds, fees, or charges, or investment income on state funds be used to create a human embryo by somatic cell nuclear transfer for any purpose.

**Source:** Laws 2008, LB606, § 6.

**ARTICLE 89**

**VETERINARY DRUG DISTRIBUTION LICENSING ACT**

Section

- 71-8901. Act, how cited.
- 71-8902. Purpose of act.
- 71-8903. Definitions, where found.
- 71-8904. Controlled substance, defined.
- 71-8905. Department, defined.
- 71-8906. Distribution, defined.
- 71-8907. Human legend drug, defined.
- 71-8908. Veterinarian-client-patient relationship, defined.
- 71-8909. Veterinary drug distributor, defined.
- 71-8910. Veterinary drug order, defined.
- 71-8911. Veterinary legend drug, defined.
- 71-8912. License required; exception.
- 71-8913. Veterinary drug distributor license; application; contents; authority.
- 71-8914. Written policies and procedures required.
- 71-8915. Provisional license conditions.
- 71-8916. Department; waiver of requirements.
- 71-8917. License; denied; disciplinary actions; grounds; department; duties.
- 71-8918. Fees.
- 71-8919. License; expiration; renewal.
- 71-8920. Inspections; fees; compliance with act.
- 71-8921. Records; available to department.
- 71-8922. Distribution of veterinary legend drugs; authorized; applicability of labeling provisions.
- 71-8923. Limitations on veterinary drug distributor.
- 71-8924. Enforcement of act.
- 71-8925. Prohibited acts.
- 71-8926. Final disciplinary action; fines.
- 71-8927. Order to cease distribution of drug; notice; hearing; powers of department.
- 71-8928. Rules and regulations.
- 71-8929. Criminal penalty.

**71-8901 Act, how cited.**

Sections 71-8901 to 71-8929 shall be known and may be cited as the Veterinary Drug Distribution Licensing Act.

**Source:** Laws 2008, LB1022, § 1.

**71-8902 Purpose of act.**



The purpose of the Veterinary Drug Distribution Licensing Act is to protect the public health, safety, and welfare by providing for the authorization and licensure of veterinary drug distributors in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such distributors.

**Source:** Laws 2008, LB1022, § 2.

**71-8903 Definitions, where found.**

For purposes of the Veterinary Drug Distribution Licensing Act, the definitions found in sections 71-8904 to 71-8911 shall apply.

**Source:** Laws 2008, LB1022, § 3.

**71-8904 Controlled substance, defined.**

Controlled substance has the definition found in section 28-401.

**Source:** Laws 2008, LB1022, § 4.

**71-8905 Department, defined.**

Department means the Division of Public Health of the Department of Health and Human Services.

**Source:** Laws 2008, LB1022, § 5.

**71-8906 Distribution, defined.**

(1) Distribution means the act of receiving orders, possessing, warehousing, and record keeping related to the sale and delivery of veterinary legend drugs.

(2) Distribution does not include (a) intracompany sales of veterinary legend drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control or (b) the delivery of or the offer to deliver veterinary legend drugs by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

**Source:** Laws 2008, LB1022, § 6.

**71-8907 Human legend drug, defined.**

Human legend drug means any drug labeled for human use and required by federal law or regulation to be dispensed pursuant to a prescription, including finished dosage forms and active ingredients. Human legend drug does not include a device or a device component, part, or accessory.

**Source:** Laws 2008, LB1022, § 7.

**71-8908 Veterinarian-client-patient relationship, defined.**

Veterinarian-client-patient relationship means a relationship pursuant to which (1) a veterinarian has assumed the responsibility for making clinical judgments regarding the health of an animal and the need for medical treatment and the client has agreed to follow the veterinarian's instructions, (2) the veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, meaning that the veterinarian has recently seen and is personally acquainted with the

keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept, and (3) the veterinarian is readily available or has arranged for emergency coverage and for followup evaluation in the event of adverse reactions or the failure of the treatment regimen.

**Source:** Laws 2008, LB1022, § 8.

**71-8909 Veterinary drug distributor, defined.**

Veterinary drug distributor means any person or entity that engages in the distribution of veterinary legend drugs in the State of Nebraska other than a pharmacy or a veterinarian licensed under the Uniform Credentialing Act acting within the scope of practice of veterinary medicine and surgery as defined in section 38-3312.

**Source:** Laws 2008, LB1022, § 9; Laws 2009, LB463, § 12.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-8910 Veterinary drug order, defined.**

Veterinary drug order means a lawful order or prescription of a veterinarian licensed to practice in this state issued pursuant to a bona fide veterinarian-client-patient relationship. For purposes of the Veterinary Drug Distribution Licensing Act, a veterinary drug order expires and becomes void one hundred eighty days after the date of issue.

**Source:** Laws 2008, LB1022, § 10; Laws 2009, LB463, § 13.

**71-8911 Veterinary legend drug, defined.**

Veterinary legend drug means a drug which under federal law is required, prior to being distributed, to be labeled with the following statement: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

**Source:** Laws 2008, LB1022, § 11.

**71-8912 License required; exception.**

No person or entity shall distribute, sell, or offer for sale any veterinary legend drug in this state without first obtaining a license issued by the department under the Veterinary Drug Distribution Licensing Act, except that a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act acting within the scope of practice of his or her profession shall not be required to be licensed under the Veterinary Drug Distribution Licensing Act.

**Source:** Laws 2008, LB1022, § 12.

**Cross References**

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

**71-8913 Veterinary drug distributor license; application; contents; authority.**

(1) Any person or entity that acts as a veterinary drug distributor in this state shall obtain a veterinary drug distributor license from the department prior to engaging in distribution of veterinary legend drugs in or into this state.

(2) An applicant for an initial or renewal license as a veterinary drug distributor shall file a written application with the department. The application shall be accompanied by the fee established by the department pursuant to section 71-8918 and shall include the following information:

(a) The applicant's name, business address, type of business entity, and telephone number. If the applicant is a partnership, the application shall include the name of each partner and the name of the partnership. If the applicant is a corporation, the application shall include the name and title of each corporate officer and director, all corporate names of the applicant, and the applicant's state of incorporation. If the applicant is a sole proprietorship, the application shall include the name of the sole proprietor, the name of the proprietorship, and the proprietor's social security number. The social security number shall not be a public record and may only be used by the department for administrative purposes;

(b) All trade or business names used by the applicant;

(c) The addresses and telephone numbers of all facilities to be used by the applicant for the storage, handling, and distribution of veterinary legend drugs and the names of persons to be in charge of such facilities. A separate license shall be obtained for each such facility;

(d) A listing of all licenses, permits, or other similar documentation issued to the applicant in any other state authorizing the applicant to purchase, possess, and distribute veterinary legend drugs;

(e) The names and addresses of the owner of the applicant's veterinary legend drug distribution facilities, a designated representative at each such facility, and all managerial employees at each such facility; and

(f) Other information as required by the department, including affirmative evidence of the applicant's ability to comply with the Veterinary Drug Distribution Licensing Act and the rules and regulations adopted under the act.

(3) The application shall be signed by:

(a) The owner, if the applicant is an individual or partnership;

(b) The member, if the applicant is a limited liability company with only one member, or two of its members, if the applicant is a limited liability company with two or more members; or

(c) Two of its officers, if the applicant is a corporation.

(4) A veterinary drug distributor holding a valid license issued pursuant to the Veterinary Drug Distribution Licensing Act shall have the authority to purchase, possess, or otherwise acquire veterinary legend drugs.

**Source:** Laws 2008, LB1022, § 13.

#### **71-8914 Written policies and procedures required.**

A veterinary drug distributor shall establish, maintain, and adhere to written policies and procedures for the receipt, storage, security, inventory, and distribution of veterinary legend drugs, including policies and procedures for identifying, recording, and reporting destruction, losses, or thefts of veterinary legend drugs and for correcting all errors and inaccuracies in inventories. The policies shall contain a provision for annual review at which time the policies shall be updated as necessary. A record documenting the review shall be kept with the

policies and procedures and shall indicate the date of the review and the signature of the designated representative of the veterinary drug distributor.

**Source:** Laws 2008, LB1022, § 14.

**71-8915 Provisional license conditions.**

To enable the establishment of distribution of veterinary legend drugs in this state, the department may issue a provisional license on or before July 1, 2009, to any applicant who meets the following conditions:

- (1) The applicant has not been found to have committed any of the acts or offenses described in section 71-8917;
- (2) The applicant has established written policies and procedures as required by section 71-8914; and
- (3) The applicant has paid a fee of five hundred dollars.

**Source:** Laws 2008, LB1022, § 15.

**71-8916 Department; waiver of requirements.**

The department may waive requirements under sections 71-8912 to 71-8915 upon proof satisfactory to the department that such requirements are duplicative of other requirements of Nebraska laws, rules, or regulations and that the granting of such waiver will not endanger the public safety.

**Source:** Laws 2008, LB1022, § 16.

**71-8917 License; denied; disciplinary actions; grounds; department; duties.**

(1) A veterinary drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the Director of Public Health if he or she finds that the applicant or licensee; the designated representative; the owner if a sole proprietorship; or any person having an interest in the applicant or licensee of more than ten percent has been found to have committed any of the following acts or offenses:

- (a) Violation of the Veterinary Drug Distribution Licensing Act or the rules and regulations adopted and promulgated under the act;
- (b) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the person's capacity to distribute veterinary legend drugs;
- (c) Unprofessional conduct under the Uniform Credentialing Act;
- (d) Active addiction as defined in section 38-106;
- (e) Permitting, aiding, or abetting veterinary drug distribution or the performance of activities requiring a license under the Veterinary Drug Distribution Licensing Act by a person not licensed under the Veterinary Drug Distribution Licensing Act;
- (f) Having had his or her credential denied, refused renewal, limited, suspended, or revoked or having had such credential disciplined in any other manner by another jurisdiction relating to the performance of veterinary drug distribution;
- (g) Performing veterinary drug distribution without a valid license or in contravention of any limitation placed upon the license; or

(h) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license under the Veterinary Drug Distribution Licensing Act.

(2) The department shall issue or renew a license to any applicant that satisfies the requirements for licensure or license renewal under the Veterinary Drug Distribution Licensing Act.

**Source:** Laws 2008, LB1022, § 17.

**Cross References**

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

**71-8918 Fees.**

(1) An applicant for an initial or renewal license under the Veterinary Drug Distribution Licensing Act shall pay a license fee as provided in this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints, other similar direct and indirect costs, and other costs of administering the act as determined by the department. If an application under the act is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall also collect a fee established by the department, not to exceed the actual cost to the department, for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall remit all license fees collected under the act to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of veterinary drug distributors.

**Source:** Laws 2008, LB1022, § 18.

**71-8919 License; expiration; renewal.**

A veterinary drug distributor license shall expire on July 1 of each odd-numbered year and may be renewed. The license shall not be transferable. The department shall mail an application for renewal to each licensee not later than May 15 of the year the license expires. If an application for renewal is received from the licensee after July 1, the department may impose a late fee and shall refuse to issue the license until such late fee and renewal fee are paid. Failure to receive an application for renewal shall not relieve the licensee from the late fee imposed by this section.

**Source:** Laws 2008, LB1022, § 19.

**71-8920 Inspections; fees; compliance with act.**

(1) Except as otherwise provided in section 71-8915, each veterinary drug distributor transacting commerce in this state shall be inspected by the department prior to the issuance of an initial or renewal license by the department under the Veterinary Drug Distribution Licensing Act.

(2) The department may provide in rules and regulations for the inspection of any veterinary drug distributor licensed in this state in such manner and at such times as the department determines. As part of any such inspection, the department may require an analysis of suspected veterinary legend drugs to determine authenticity.

(3) For applicants not located in this state, the department may accept an inspection which was accepted for licensure by another state in which the applicant is licensed or by a nationally-recognized accreditation program in lieu of an inspection by the department under this section.

(4) The department may establish and collect fees for inspection activities conducted under this section. Such fees shall not exceed the department's actual cost for such inspection activities.

(5) The department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing a licensee's compliance with the Veterinary Drug Distribution Licensing Act and the rules and regulations adopted and promulgated under the act.

**Source:** Laws 2008, LB1022, § 20.

**71-8921 Records; available to department.**

(1) A veterinary drug distributor transacting commerce in this state shall establish and maintain accurate records of all transactions regarding the receipt and distribution or other disposition of veterinary legend drugs as provided in the Veterinary Drug Distribution Licensing Act.

(2) All records of receipt, distribution, or other disposal of veterinary legend drugs shall be available to the department upon request for inspection, copying, verifying, or other proper use.

(3) If a veterinary drug distributor is authorized by the department to maintain records at a central location, such records shall be made available for authorized inspections within forty-eight hours.

(4) Records kept at a central location that can be retrieved by computer or other electronic means shall be readily available for authorized inspection during the inspection period.

**Source:** Laws 2008, LB1022, § 21.

**71-8922 Distribution of veterinary legend drugs; authorized; applicability of labeling provisions.**

A veterinary drug distributor may distribute veterinary legend drugs to:

(1) A licensed veterinarian or to another veterinary drug distributor subject to the requirements of section 71-8921; and

(2) A layperson responsible for the control of an animal if:

(a) A licensed veterinarian has issued, prior to such distribution, a veterinary drug order for the veterinary legend drug in the course of an existing, valid veterinarian-client-patient relationship and the veterinary drug order is in compliance with all federal laws and regulations;

(b) At the time the veterinary legend drug leaves the licensed location of the veterinary drug distributor, those in the employ of the veterinary drug distributor possess a copy of the veterinary drug order for the veterinary legend drug issued according to subdivision (a) of this subdivision and deliver a copy to the

layperson responsible for the control of the animal at the time of the distribution;

(c) The original veterinary drug order issued according to subdivision (a) of this subdivision is retained on the premises of the veterinary drug distributor or an authorized central location for three years after the date of the last transaction affecting the veterinary drug order;

(d) All veterinary legend drugs distributed on the veterinary drug order issued according to subdivision (a) of this subdivision are sold in the original, unbroken manufacturer's containers; and

(e) The veterinary legend drugs, once distributed, are not returned to the veterinary drug distributor for resale or redistribution.

Nothing contained in Nebraska statutes governing the practice of pharmacy shall be construed to prohibit a veterinary drug distributor from selling or otherwise distributing a veterinary legend drug pursuant to a veterinary drug order by a veterinarian licensed in this state and, when a valid veterinarian-client-patient relationship exists, to the layperson responsible for the control of the animal.

(3) If all federal labeling requirements are met, labeling provisions of Nebraska laws governing the practice of pharmacy shall not apply to veterinary legend drugs distributed pursuant to the Veterinary Drug Distribution Licensing Act.

**Source:** Laws 2008, LB1022, § 22; Laws 2009, LB463, § 14.

#### **71-8923 Limitations on veterinary drug distributor.**

A veterinary drug distributor shall not:

- (1) Operate from a place of residence;
- (2) Possess, sell, purchase, trade, or otherwise furnish controlled substances; and
- (3) Possess, sell, purchase, trade, or otherwise furnish human legend drugs.

**Source:** Laws 2008, LB1022, § 23.

#### **71-8924 Enforcement of act.**

The department, the Attorney General, or any county attorney may institute an action in the name of the state for an injunction or other process against any person to restrain or prevent any violation of the Veterinary Drug Distribution Licensing Act or any rules and regulations adopted and promulgated under the act.

**Source:** Laws 2008, LB1022, § 24.

#### **71-8925 Prohibited acts.**

It is unlawful for any person to commit or to permit, cause, aid, or abet the commission of any of the following acts in this state:

- (1) Any violation of the Veterinary Drug Distribution Licensing Act or rules and regulations adopted and promulgated under the act;
- (2) Providing the department, any of its representatives, or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter under the act;

(3) Obtaining or attempting to obtain a veterinary legend drug by fraud, deceit, or misrepresentation or engaging in the intentional misrepresentation or fraud in the distribution of a veterinary legend drug;

(4) Except for the distribution by manufacturers of a veterinary legend drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the manufacture, repackaging, sale, transfer, delivery, holding, or offering for sale of any veterinary legend drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or otherwise rendered unfit for distribution;

(5) Except for the wholesale distribution by manufacturers of a veterinary legend drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the adulteration, misbranding, or counterfeiting of any veterinary legend drug;

(6) The deliberate receipt of any veterinary legend drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit and the delivery or proffered delivery of such drug for pay or otherwise;

(7) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a veterinary legend drug or the commission of any other act with respect to a veterinary legend drug that results in the veterinary legend drug being misbranded;

(8) For purposes of the Veterinary Drug Distribution Licensing Act, the manufacture, repackaging, sale, transfer, delivery, holding, possessing or offering for sale, trade, or any other form of dissemination, any controlled substance; and

(9) Prohibiting or otherwise impeding access, during normal business hours, to any paper or electronic records or any premises, facility, area, or location to which access is authorized by the act.

**Source:** Laws 2008, LB1022, § 25.

**71-8926 Final disciplinary action; fines.**

(1) Upon issuance of a final disciplinary action against a person who knowingly and intentionally violates any provision of section 71-8925 other than as provided in subsection (2) of this section, the department shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person, not to exceed ten thousand dollars.

(2) Upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-8925, the department shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand dollars times the number of such disciplinary actions, not to exceed ten thousand dollars.



(3) All fines collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 2008, LB1022, § 26.

**71-8927 Order to cease distribution of drug; notice; hearing; powers of department.**

(1) If the department finds there is a reasonable probability that (a) a veterinary drug distributor has knowingly and intentionally falsified documents relevant to the purchase, sale, or distribution of veterinary legend drugs or has sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit veterinary legend drug and (b) such drug could cause serious, adverse health consequences or death, the department may issue an order to immediately cease distribution of such drug.

(2) Persons subject to any order issued by the department under this section shall be provided with notice and an opportunity for an informal hearing to be held not later than thirty days after the date the order was issued. If the department determines, after such hearing, that inadequate grounds exist to support the actions required by the order, the department shall vacate the order.

**Source:** Laws 2008, LB1022, § 27.

**71-8928 Rules and regulations.**

The department may adopt and promulgate rules and regulations to carry out the Veterinary Drug Distribution Licensing Act.

**Source:** Laws 2008, LB1022, § 28.

**71-8929 Criminal penalty.**

Any person who knowingly and intentionally engages in distribution of veterinary legend drugs in this state in violation of the Veterinary Drug Distribution Licensing Act is guilty of a Class III felony.

**Source:** Laws 2008, LB1022, § 29.

**ARTICLE 90**

**SEXUAL ASSAULT OR DOMESTIC VIOLENCE PATIENT**

Section

71-9001. Sexual assault or domestic violence patient; examination and treatment authorized.

**71-9001 Sexual assault or domestic violence patient; examination and treatment authorized.**

A physician, his or her agent, or a mental health professional as defined in section 71-906, upon consultation with a patient who is eighteen years of age, shall, with the consent of the patient, make or cause to be made a diagnostic examination for physical or mental injuries associated with sexual assault or domestic violence and prescribe for and treat such person for injuries associated with sexual assault or domestic violence. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of the patient.

**Source:** Laws 2011, LB479, § 2.

## ARTICLE 91

## CONCUSSION AWARENESS ACT

## Section

- 71-9101. Act, how cited.  
71-9102. Legislative findings.  
71-9103. Terms, defined.  
71-9104. Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.  
71-9105. City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.  
71-9106. Act; how construed.

**71-9101 Act, how cited.**

Sections 71-9101 to 71-9106 shall be known and may be cited as the Concussion Awareness Act.

**Source:** Laws 2011, LB260, § 1.

**71-9102 Legislative findings.**

(1) The Legislature finds that concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities and that the risk of catastrophic injury or death is significant when a concussion or brain injury is not properly evaluated and managed.

(2) The Legislature further finds that concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness.

(3) The Legislature further finds that continuing to play with a concussion or symptoms of brain injury leaves a young athlete especially vulnerable to greater injury and even death. The Legislature recognizes that, despite having generally recognized return-to-play standards for concussion and brain injury, some young athletes are prematurely returned to play, resulting in actual or potential physical injury or death.

**Source:** Laws 2011, LB260, § 2.

**71-9103 Terms, defined.**

For purposes of the Concussion Awareness Act:

(1) Chief medical officer means the chief medical officer as designated in section 81-3115; and

(2) Licensed health care professional means a physician or licensed practitioner under the direct supervision of a physician, a certified athletic trainer, a neuropsychologist, or some other qualified individual who (a) is registered, licensed, certified, or otherwise statutorily recognized by the State of Nebraska to provide health care services and (b) is trained in the evaluation and management of traumatic brain injuries among a pediatric population.

**Source:** Laws 2011, LB260, § 3.

**71-9104 Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.**

(1) Each approved or accredited public, private, denominational, or parochial school shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches of school athletic teams;

(b) Require that concussion and brain injury information be provided on an annual basis to students and the students' parents or guardians prior to such students initiating practice or competition. The information provided to students and the students' parents or guardians shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions a student should take in response to sustaining a concussion, including the notification of his or her coaches; and

(c) Establish a return to learn protocol for students that have sustained a concussion. The return to learn protocol shall recognize that students who have sustained a concussion and returned to school may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff until the student is fully recovered.

(2)(a) A student who participates on a school athletic team shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional who is professionally affiliated with or contracted by the school. Such student shall not be permitted to participate in any school supervised team athletic activities involving physical exertion, including, but not limited to, practices or games, until the student (i) has been evaluated by a licensed health care professional, (ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional, and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the school accompanied by written permission to resume participation from the student's parent or guardian.

(b) If a student is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the student shall be notified by the school of the date and approximate time of the injury suffered by the student, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the student.

(c) Nothing in this subsection shall be construed to require any school to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is provided to a school shall be deemed to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care profes-

sional. The school shall not be required to determine or verify the individual's qualifications.

**Source:** Laws 2011, LB260, § 4; Laws 2014, LB923, § 5.

**71-9105 City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.**

(1) Any city, village, business, or nonprofit organization that organizes an athletic activity in which the athletes are nineteen years of age or younger and are required to pay a fee to participate in the athletic activity or whose cost to participate in the athletic activity is sponsored by a business or nonprofit organization shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches; and

(b) Provide information on concussions and brain injuries to all coaches and athletes and to a parent or guardian of each athlete that shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions an athlete should take in response to sustaining a concussion, including the notification of his or her coaches.

(2)(a) An athlete who participates in an athletic activity under subsection (1) of this section shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional. Such athlete shall not be permitted to participate in any supervised athletic activities involving physical exertion, including, but not limited to, practices or games, until the athlete (i) has been evaluated by a licensed health care professional, (ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional, and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the city, village, business, or nonprofit organization that organized the athletic activity accompanied by written permission to resume participation from the athlete's parent or guardian.

(b) If an athlete is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the athlete shall be notified by the coach or a representative of the city, village, business, or nonprofit organization that organized the athletic activity of the date and approximate time of the injury suffered by the athlete, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the athlete.

(c) Nothing in this subsection shall be construed to require any city, village, business, or nonprofit organization to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is provided to a city, village, business, or nonprofit organization shall be deemed

to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care professional. The city, village, business, or nonprofit organization shall not be required to determine or verify the individual's qualifications.

**Source:** Laws 2011, LB260, § 5.

**71-9106 Act; how construed.**

Nothing in the Concussion Awareness Act shall be construed to create liability for or modify the liability or immunity of a school, school district, city, village, business, or nonprofit organization or the officers, employees, or volunteers of any such school, school district, city, village, business, or nonprofit organization.

**Source:** Laws 2011, LB260, § 6.

**ARTICLE 92**

**HEALTH CARE TRANSPARENCY ACT**

Section

- 71-9201. Repealed. Laws 2017, LB644, § 21.
- 71-9202. Repealed. Laws 2017, LB644, § 21.
- 71-9203. Repealed. Laws 2017, LB644, § 21.
- 71-9204. Repealed. Laws 2017, LB644, § 21.

**71-9201 Repealed. Laws 2017, LB644, § 21.**

**71-9202 Repealed. Laws 2017, LB644, § 21.**

**71-9203 Repealed. Laws 2017, LB644, § 21.**

**71-9204 Repealed. Laws 2017, LB644, § 21.**

**ARTICLE 93**

**HOME CARE CONSUMER BILL OF RIGHTS ACT**

Section

- 71-9301. Act, how cited.
- 71-9302. Terms, defined.
- 71-9303. Minor child; incapacitated person; representation; assistance in securing rights.
- 71-9304. Rights.
- 71-9305. Attorney General; enforcement; powers; civil action; civil penalty; damages.
- 71-9306. Civil action.

**71-9301 Act, how cited.**

Sections 71-9301 to 71-9306 shall be known and may be cited as the Home Care Consumer Bill of Rights Act.

**Source:** Laws 2016, LB698, § 1.

**71-9302 Terms, defined.**

For purposes of the Home Care Consumer Bill of Rights Act:

(1) Home care consumer means any person who receives home care services and who is (a) sixty years of age or older or (b) a person with disabilities and is younger than sixty years of age. Home care consumer shall also include the

parent or guardian of the home care consumer when the consumer is a minor child;

(2) Home care services means home and community-based services the purposes of which are to promote independence and reduce the necessity for residence in a long-term care facility, including, but not limited to, personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed, and which are provided under the medicare program under Title XVIII of the federal Social Security Act, as amended, the medicaid program under Title XIX of the federal Social Security Act, as amended, or any other public or private program providing home care services; and

(3) Provider of home care services means a public or private organization that provides home care services or arranges for the provision of home care services by an independent contractor.

**Source:** Laws 2016, LB698, § 2.

**71-9303 Minor child; incapacitated person; representation; assistance in securing rights.**

(1) A home care consumer who is a minor child shall be represented by his or her parent or guardian. Such parent or guardian shall act on behalf of the minor child in securing the minor child's rights under the Home Care Consumer Bill of Rights Act.

(2) A home care consumer who has been found by a court to be an incapacitated person shall be represented by a guardian. Such guardian shall act on behalf of the incapacitated person in securing the incapacitated person's rights under the Home Care Consumer Bill of Rights Act.

(3) A home care consumer or an incapacitated person who is not a minor child has the right to the assistance of an agent, an attorney, an individual designated pursuant to a power of attorney, or an individual otherwise designated in writing by the home care consumer to act on behalf of the home care consumer in securing his or her rights under the act.

**Source:** Laws 2016, LB698, § 3.

**71-9304 Rights.**

In addition to any other rights recognized under state or federal law, a home care consumer has the following rights:

(1) The right to confidentiality of all personal, financial, and medical information which is disclosed to a provider of home care services. A home care consumer also has the right of access to his or her own records and all written information from those records;

(2) The right to receive disclosure from the provider of home care services in writing and in plain language (a) whether the provider of home care services is an employer, a joint employer, an employee leasing company, or a contractor, as applicable, and (b) that the home care consumer (i) may be considered an employer under law and, if the home care consumer is so considered, may be held responsible for the payment of federal and state taxes, including, but not limited to, federal and state income taxes, taxes under the Federal Insurance Contributions Act for purposes of social security and medicare, contributions under the Federal Unemployment Tax Act and the Employment Security Law,

payment of overtime pay and minimum wage, workers' compensation insurance, and any other applicable payments required under state or federal law and (ii) should consult a tax professional if the home care consumer is uncertain about his or her responsibility for such payments;

(3) The right to be informed of the home care consumer's rights under the Home Care Consumer Bill of Rights Act by a provider of home care services prior to receiving home care services. The provider of home care services shall provide a copy of the rights guaranteed by the Home Care Consumer Bill of Rights Act in the format accessible to the consumer which may include paper, electronic, audio, large print, or braille;

(4) The right to be informed of the contact information for the entities the home care consumer may contact if the home care consumer's rights are violated, including the Consumer Protection Division of the Office of the Attorney General, in order to have grievances addressed in an appropriate and timely manner and without retaliation;

(5) The right to participate in the planning of his or her home care services, including, but not limited to, the right to make choices about aspects of the home care services that are important to him or her, choosing providers and schedules to the extent practicable, receiving reasonable accommodation of his or her needs and preferences, and involving anyone he or she chooses to participate with him or her in that planning;

(6) The right to receive sufficient information to make informed decisions, to be fully informed in advance about any proposed changes in home care services, and to be involved in the decisionmaking process regarding those changes;

(7) The right to refuse home care services;

(8) The right to be informed of the cost of home care services prior to receiving those services, whether the cost of home care services is covered under health insurance, long-term care insurance, or other private or public programs, and any charges the home care consumer will be expected to pay for such home care services. A home care consumer has the right to thirty days' advance notice of any changes to such costs or services;

(9) The right to receive care and services provided in a way that promotes his or her dignity and individuality; and

(10) The right to (a) express grievances about the quality of the home care services, the number of hours of home care services, and any violations of the home care consumer's rights under the Home Care Consumer Bill of Rights Act and (b) assert the rights under the act without retaliation.

**Source:** Laws 2016, LB698, § 4.

#### Cross References

Employment Security Law, see section 48-601.

#### **71-9305 Attorney General; enforcement; powers; civil action; civil penalty; damages.**

(1) When the Attorney General has cause to believe that any provider of home care services is violating the Home Care Consumer Bill of Rights Act, the Attorney General may enforce the act.

(2) For purposes of the act, the Attorney General may:

(a) Require a provider of home care services to file a statement or report in writing under oath or otherwise as to all facts and circumstances concerning the provision of home care services to the home care consumer;

(b) Examine under oath any person in connection with the provision of home care services;

(c) Examine any property or sample thereof, record, book, document, account, or paper as the Attorney General deems necessary; and

(d) Issue subpoenas to require the attendance of witnesses or the production of documents.

(3) The Attorney General may bring a civil action in the district court of any county in which a violation occurred, or in Lancaster County, seeking injunctive relief and a monetary award for civil penalties, attorney’s fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation.

(4) The Attorney General may also seek and recover actual damages for each health care consumer injured by a violation of the act.

**Source:** Laws 2016, LB698, § 5.

**71-9306 Civil action.**

Any home care consumer who suffers a loss or harm as a result of a violation of the Home Care Consumer Bill of Rights Act may file a civil action to recover actual damages, attorney’s fees, court costs, and any other remedies provided by law.

**Source:** Laws 2016, LB698, § 6.

**ARTICLE 94**

**ASSISTING CAREGIVER TRANSITIONS ACT**

Section

- 71-9401. Act, how cited.
- 71-9402. Terms, defined.
- 71-9403. Designation of caregiver; hospital; duties.
- 71-9404. Designation of caregiver; record; contents; effect of designation.
- 71-9405. Notification of discharge or transfer.
- 71-9406. Discharge plan; contents; instructions concerning aftercare tasks; documentation.
- 71-9407. Assisting Caregiver Transitions Act; effect.
- 71-9408. Rules and regulations.

**71-9401 Act, how cited.**

Sections 71-9401 to 71-9408 shall be known and may be cited as the Assisting Caregiver Transitions Act.

**Source:** Laws 2016, LB698, § 7.

**71-9402 Terms, defined.**

For purposes of the Assisting Caregiver Transitions Act:

(1) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administration of medication, and similar activities;

(2) Aftercare means assistance provided by a caregiver to a patient in the patient’s residence after the patient’s discharge from a hospital following an



inpatient stay and may include, but is not limited to, (a) assisting with activities of daily living and (b) carrying out medical or nursing tasks, including, but not limited to, managing wound care, assisting in administration of medication, and operating medical equipment;

(3) Caregiver means a person nineteen years of age or older who is designated by a patient or a patient's legal guardian to provide aftercare;

(4) Hospital means a general acute hospital as defined in section 71-412; and

(5) Residence means the home in which a patient resides. Residence does not include an assisted-living facility as defined in section 71-5903, a group home, a hospital as defined in section 71-419, an intermediate care facility as defined in section 71-420, a rehabilitation hospital as defined in section 71-427 or other rehabilitation facility, a nursing facility as defined in section 71-424, or a skilled nursing facility as defined in section 71-429.

**Source:** Laws 2016, LB698, § 8; Laws 2018, LB439, § 10.  
Effective date July 19, 2018.

#### **71-9403 Designation of caregiver; hospital; duties.**

(1) A hospital shall give each patient or patient's legal guardian the opportunity to designate at least one caregiver as soon as practicable and prior to the patient's release.

(2) If a patient is unconscious or incapacitated upon his or her admission to the hospital, the hospital shall give the patient or the patient's legal guardian the opportunity to designate a caregiver as soon as possible after the patient's recovery of consciousness or capacity.

(3) A patient or his or her legal guardian is not required to designate a caregiver at any time. If a patient or a patient's legal guardian declines to designate a caregiver, the hospital shall document this fact in the patient's medical record.

**Source:** Laws 2016, LB698, § 9.

#### **71-9404 Designation of caregiver; record; contents; effect of designation.**

(1) If a patient or a patient's legal guardian designates a caregiver, the hospital shall record in the patient's medical record the designated caregiver's name, his or her relationship to the patient, and the caregiver's telephone number, residence address, and other contact information.

(2) A patient or a patient's legal guardian may change the caregiver designation at any time. The hospital shall document the change in the patient's medical record before the patient's discharge.

(3) A person designated as a caregiver is not obligated to accept such designation or to perform aftercare for the designating patient or patient's legal guardian.

**Source:** Laws 2016, LB698, § 10.

#### **71-9405 Notification of discharge or transfer.**

If a patient or a patient's legal guardian designates a caregiver, the hospital shall notify the caregiver of the patient's discharge from the hospital or transfer to another facility as soon as practicable which may be after the patient's physician issues a discharge or transfer order. If the hospital is unable to

contact the caregiver, such lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient or the medically appropriate discharge or transfer of the patient. The hospital shall document all attempts to contact the caregiver in the patient's medical record.

**Source:** Laws 2016, LB698, § 11.

**71-9406 Discharge plan; contents; instructions concerning aftercare tasks; documentation.**

(1) As soon as possible after designation of a caregiver and prior to the patient's discharge, the hospital shall attempt to consult with the patient or the patient's legal guardian and the caregiver and shall issue a discharge plan that describes the patient's aftercare needs. The discharge plan shall include, but need not be limited to:

(a) The name and contact information of the caregiver, as provided by him or her; and

(b) A description of the aftercare tasks necessary to maintain the patient's ability to reside in his or her residence.

(2) The hospital shall provide the caregiver with instructions concerning all aftercare tasks described in the discharge plan. The instructions shall include, but need not be limited to:

(a) A live demonstration of or instruction in the aftercare tasks, as performed by a hospital employee or other authorized individual in a culturally competent manner;

(b) An opportunity for the caregiver and the patient or the patient's guardian to ask questions about aftercare; and

(c) Answers to the caregiver's, patient's, and patient's legal guardian's questions in a culturally competent manner.

(3) The hospital shall document the instructions in the patient's medical record, including the date, time, and contents of the instructions and whether the caregiver accepted or refused the offer of instruction.

**Source:** Laws 2016, LB698, § 12.

**71-9407 Assisting Caregiver Transitions Act; effect.**

The Assisting Caregiver Transitions Act does not:

(1) Create a private right of action against a hospital, a hospital employee, or a person with whom the hospital has a contractual relationship;

(2) Create additional civil or regulatory liability for a hospital, a hospital employee, or a person with whom the hospital has a contractual relationship;

(3) Supersede or replace existing rights or remedies under any other law;

(4) Affect a license issued to a hospital pursuant to the Health Care Facility Licensure Act;

(5) Establish a new requirement to reimburse or otherwise pay for services rendered by a caregiver for aftercare; or

(6) Interfere with an individual acting under a valid power of attorney for health care as defined in section 30-3402 or acting as a conservator as defined in section 30-2209.

**Source:** Laws 2016, LB698, § 13.

## Cross References

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

**71-9408 Rules and regulations.**

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Assisting Caregiver Transitions Act.

**Source:** Laws 2016, LB698, § 14.

**ARTICLE 95****DIRECT PRIMARY CARE AGREEMENT ACT**

## Section

- 71-9501. Act, how cited.
- 71-9502. Legislative intent; purpose of act.
- 71-9503. Terms, defined.
- 71-9504. Direct agreement; requirements; notice; copy to direct patient.
- 71-9505. Direct provider; provide written disclaimer; notice; contents.
- 71-9506. Direct provider; limitation on activities; duty.
- 71-9507. Direct agreement; not insurance; certificate of authority or license not required; billing limitations.
- 71-9508. Direct provider; direct service charges; acceptance of payments.
- 71-9509. Direct agreement; sale or transfer; written consent.
- 71-9510. Direct provider; acceptance of payments from medical assistance program.
- 71-9511. Direct provider; primary care services; payment.

**71-9501 Act, how cited.**

Sections 71-9501 to 71-9511 shall be known and may be cited as the Direct Primary Care Agreement Act.

**Source:** Laws 2016, LB817, § 1.

**71-9502 Legislative intent; purpose of act.**

(1) It is the intent of the Legislature to promote personal responsibility for health care and cost-effective delivery of health care by enabling the innovative use of direct primary care practice agreements for primary medical care in order to improve access to medical care, reduce the use of emergency departments for primary care, and allow emergency departments to treat emergencies more effectively and reduce costs.

(2) The purpose of the Direct Primary Care Agreement Act is to confirm that direct primary care agreements that meet the requirements of the act do not constitute insurance or function as a qualified health plan pursuant to any federal mandates.

**Source:** Laws 2016, LB817, § 2.

**71-9503 Terms, defined.**

For purposes of the Direct Primary Care Agreement Act:

- (1) Direct agreement means a direct primary care agreement entered into on or after July 21, 2016, meeting the requirements of section 71-9504;
- (2) Direct patient means an individual or family that is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct provider;

(3) Direct provider means (a) a physician or nurse practitioner who is licensed under the Uniform Credentialing Act, who specializes or is board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provides primary care services through a direct agreement, (b) a group of physicians or nurse practitioners who are licensed under the Uniform Credentialing Act, who specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and who provide primary care services as a group through a direct agreement, or (c) an entity that sponsors, employs, or is otherwise affiliated with a group of physicians or nurse practitioners, which physicians or nurse practitioners are licensed under the Uniform Credentialing Act, specialize or are board-certified in general practice, family medicine, internal medicine, or pediatrics, and provide only primary care services as a group through a direct agreement if (i) the entity is wholly owned by the group of physicians or nurse practitioners or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and (ii) the entity is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer. Such an entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct agreement;

(4) Direct service charge means a charge for primary care services provided by, or to be provided by, the direct provider to the direct patient. Direct service charge includes a charge in any form, including a periodic retainer, membership fee, subscription fee, or other charge paid under a direct agreement;

(5) Patient's representative means a guardian or other person holding a power of attorney for health care; and

(6) Primary care means general health care services of the type provided at the time a patient seeks preventive care or first seeks health care services for a specific health concern. Primary care may include, but not be limited to:

(a) Care which promotes and maintains mental and physical health and wellness;

(b) Care which prevents disease;

(c) Screening, diagnosing, and treating acute or chronic conditions caused by disease, injury, or illness;

(d) Providing patient counseling and education; and

(e) Providing a broad spectrum of preventive and curative health care over a period of time.

**Source:** Laws 2016, LB817, § 3.

**Cross References**

Uniform Credentialing Act, see section 38-101.

**71-9504 Direct agreement; requirements; notice; copy to direct patient.**

(1) In order to be a valid direct agreement for purposes of the Direct Primary Care Agreement Act, a direct agreement between a direct provider and a direct patient or the patient's representative in which the direct provider charges a direct service charge as consideration for being available to provide and for providing primary care services to the direct patient shall meet the following requirements:

- (a) A direct agreement shall be in writing;
- (b) A direct agreement shall be signed by the direct provider or an agent of the direct provider and the direct patient or the direct patient's representative;
- (c) A direct agreement shall describe the scope of the primary care services included in the direct agreement;
- (d) A direct agreement shall state each location where primary care services may be provided and whether out-of-office services are included;
- (e) A direct agreement shall specify the direct service charge and any other charges for primary care services not covered by the direct service charge;
- (f) A direct agreement shall specify the duration of the direct agreement, whether renewal is automatic, and procedures for renewal if required;
- (g) A direct agreement shall specify the terms of the direct agreement and the conditions upon which the direct agreement may be terminated by the direct provider, including at least thirty days' notice to the direct patient in accordance with section 71-2085;
- (h) A direct agreement shall state that the direct agreement is terminable at will by written notice from the direct patient to the direct provider;
- (i) A direct agreement shall state that if a party provides written notice of termination of the direct agreement, the direct provider is required to refund to the direct patient all unearned direct service charges within thirty days after the date of the notice of termination;
- (j) A direct agreement shall prominently state in writing that the direct patient is required to pay the direct provider for any service not specified in the direct agreement and not otherwise covered by insurance; and
- (k) A direct agreement shall include a notice that reads substantially as follows:

NOTICE: This direct primary care agreement does not constitute insurance and is not a medical plan that provides health insurance coverage for purposes of any federal mandates. This direct primary care agreement only provides for the primary care services described in the agreement. It is recommended that insurance be obtained to cover medical services not provided for under this direct primary care agreement. You are always personally responsible for the payment of any additional medical expenses you may incur.

(2) A direct provider shall ensure that a copy of a direct agreement is given to each direct patient at the time the patient signs the direct agreement.

**Source:** Laws 2016, LB817, § 4.

**71-9505 Direct provider; provide written disclaimer; notice; contents.**

A direct provider shall provide a written disclaimer on or accompanying each application for primary care services under a direct agreement with the direct provider and any guidelines distributed by or on behalf of the direct provider that informs a patient of his or her financial rights and responsibilities and that states that the direct provider will not bill a health insurance carrier for services covered under the direct agreement. The disclaimer shall also include a notice that reads substantially as follows:

NOTICE: This direct primary care agreement does not constitute insurance and is not a medical plan that provides health insurance coverage for purposes of any federal mandates. This direct primary care agreement only provides for

the primary care services described in the agreement. It is recommended that insurance be obtained to cover medical services not provided for under this direct primary care agreement. You are always personally responsible for the payment of any additional medical expenses you may incur.

**Source:** Laws 2016, LB817, § 5.

**71-9506 Direct provider; limitation on activities; duty.**

(1) A direct provider shall not refuse to accept a new direct patient or discontinue care to an existing direct patient solely because of the patient's health status.

(2) A direct provider shall provide at least sixty days' advance notice to an existing direct patient of any change to the direct service charge applicable to the patient.

(3) A direct provider shall not pay for health care services covered by an agreement rendered to patients by direct providers other than the direct providers in the same direct primary care practice or their employees.

**Source:** Laws 2016, LB817, § 6.

**71-9507 Direct agreement; not insurance; certificate of authority or license not required; billing limitations.**

(1) A direct agreement is not insurance and is not subject to Chapter 44.

(2) Neither a direct provider nor an agent of a direct provider is required to obtain a certificate of authority or license under Chapter 44 to market, sell, or offer to sell a direct agreement.

(3) A direct provider shall not bill an insurer for services provided under a direct agreement. A patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This subsection does not prohibit a direct provider from billing insurance for services not provided under a direct agreement.

**Source:** Laws 2016, LB817, § 7.

**71-9508 Direct provider; direct service charges; acceptance of payments.**

A direct provider may accept payment of direct service charges directly or indirectly from third parties. A direct provider may accept all or part of a direct service charge paid by an employer on behalf of an employee who is a direct patient. A direct provider shall not enter into a contract with an employer relating to direct agreements between the direct provider and employees of that employer other than to establish the timing and method of the payment of the direct service charge by the employer.

**Source:** Laws 2016, LB817, § 8.

**71-9509 Direct agreement; sale or transfer; written consent.**

A direct agreement shall not be sold or transferred by either party without the written consent of the other party to the direct agreement.

**Source:** Laws 2016, LB817, § 9.

**71-9510 Direct provider; acceptance of payments from medical assistance program.**

Subject to the restrictions established in the Direct Primary Care Agreement Act, a direct provider may accept payment of direct service charges directly or indirectly from the medical assistance program under the Medical Assistance Act or any entity contracting with the State of Nebraska to provide managed care in the medical assistance program subject to any necessary approval from the federal Centers for Medicare and Medicaid Services.

**Source:** Laws 2016, LB817, § 10.

Cross References

Medical Assistance Act, see section 68-901.

**71-9511 Direct provider; primary care services; payment.**

A direct provider may provide primary care services to a patient who is not a party to a direct agreement with that provider and may receive payment for the services.

**Source:** Laws 2016, LB817, § 11.

**ARTICLE 96**

**INVESTIGATIONAL DRUG USE ACT**

Section

- 71-9601. Act, how cited.
- 71-9602. Terms, defined.
- 71-9603. Eligible patient.
- 71-9604. Written informed consent; contents.
- 71-9605. Manufacturer of investigational drug, biological product, or device; powers.
- 71-9606. Manufacturer; provide without compensation.
- 71-9607. Death of patient; effect on debt.
- 71-9608. Good-faith recommendation; effect on discipline or adverse licensure action.
- 71-9609. Treating physician.
- 71-9610. Official, employee, or agent of the state.
- 71-9611. No private cause of action created.

**71-9601 Act, how cited.**

Sections 71-9601 to 71-9611 shall be known and may be cited as the Investigational Drug Use Act.

**Source:** Laws 2018, LB117, § 1.  
Effective date July 19, 2018.

**71-9602 Terms, defined.**

For purposes of the Investigational Drug Use Act:

- (1) Advanced illness means any progressive disease or medical or surgical condition that entails significant functional impairment, that is not considered by a treating physician to be reversible even with administration of federally approved and available treatments, and that, without life-sustaining procedures, would likely result in death within six months;
- (2) Eligible patient means a person who meets the requirements of section 71-9603;
- (3) Health care provider has the same meaning as in section 71-7907;
- (4) Investigational drug, biological product, or device means any drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States

Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration;

(5) Physician means any person who is licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act; and

(6) Written, informed consent means a writing which conforms to section 71-9604.

**Source:** Laws 2018, LB117, § 2.

Effective date July 19, 2018.

**Cross References**

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

**71-9603 Eligible patient.**

To be an eligible patient under the Investigational Drug Use Act, a person shall:

- (1) Have an advanced illness, attested by the person's treating physician;
- (2) Have considered all other treatment options approved by the United States Food and Drug Administration at the time;
- (3) Have a recommendation from his or her treating physician for an investigational drug, biological product, or device;
- (4) Give written, informed consent for the use of the investigational drug, biological product, or device;
- (5) Have documentation from his or her treating physician that he or she meets the requirements of the act; and
- (6) Not be a patient receiving inpatient treatment in a hospital licensed pursuant to the Health Care Facility Licensure Act.

**Source:** Laws 2018, LB117, § 3.

Effective date July 19, 2018.

**Cross References**

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

**71-9604 Written informed consent; contents.**

To be acceptable under the Investigational Drug Use Act, a written, informed consent shall consist of a signed writing executed by an eligible patient, or his or her parent or legal guardian if the eligible patient is a minor, and attested to by the eligible patient's treating physician, that:

- (1) Explains the approved products and treatments available at that time for the disease or condition from which the patient suffers;
- (2) Attests to the fact that the patient concurs with his or her treating physician that no treatment then approved by the United States Food and Drug Administration would likely prolong the patient's life;
- (3) Clearly identifies the specific proposed investigational drug, biological product, or device that the patient is seeking to use;
- (4) Describes the potential outcomes, if known, of using the investigational drug, biological product, or device. The description shall include any possibility of worsening symptoms and death hastened by the treatment;



(5) Contains a statement that the patient's health insurance carrier is not obligated to pay for the investigational drug, biological product, or device; and

(6) Makes clear that the patient understands that he or she is liable for all expenses of the investigational drug, biological product, or device.

**Source:** Laws 2018, LB117, § 4.  
Effective date July 19, 2018.

**71-9605 Manufacturer of investigational drug, biological product, or device; powers.**

A manufacturer of an investigational drug, biological product, or device may make the treatment available pursuant to the Investigational Drug Use Act. An eligible patient may request the manufacturer's investigational drug, biological product, or device for treatment pursuant to the act. The act does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

**Source:** Laws 2018, LB117, § 5.  
Effective date July 19, 2018.

**71-9606 Manufacturer; provide without compensation.**

A manufacturer may provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

**Source:** Laws 2018, LB117, § 6.  
Effective date July 19, 2018.

**71-9607 Death of patient; effect on debt.**

If an eligible patient dies while being treated by an investigational drug, biological product, or device, the manufacturer may not seek reimbursement for any outstanding debt related to the treatment or lack of insurance due to the treatment from the eligible patient's or his or her caretaker's estate.

**Source:** Laws 2018, LB117, § 7.  
Effective date July 19, 2018.

**71-9608 Good-faith recommendation; effect on discipline or adverse licensure action.**

A good-faith recommendation to an eligible patient regarding access to treatment with an investigational drug, biological product, or device shall not subject the health care provider to discipline or an adverse licensure action.

This section does not preclude any penalties under federal law, including 42 U.S.C. 1395.

**Source:** Laws 2018, LB117, § 8.  
Effective date July 19, 2018.

**71-9609 Treating physician.**

A treating physician while acting in good faith in the course of his or her professional practice as authorized by the Investigational Drug Use Act may not

be subject to arrest, prosecution, penalty, or denial of any right or privilege granted otherwise.

**Source:** Laws 2018, LB117, § 9.  
Effective date July 19, 2018.

**71-9610 Official, employee, or agent of the state.**

No official, employee, or agent of this state may block or attempt to block an eligible patient's access to an investigational drug, biological product, or device. Counseling, advice, or recommendations consistent with medical standards of care from a licensed health care provider is not a violation of this section.

**Source:** Laws 2018, LB117, § 10.  
Effective date July 19, 2018.

**71-9611 No private cause of action created.**

The Investigational Drug Use Act does not create a private cause of action against a manufacturer of an investigational drug, biological product, or device or against another person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device for any harm done to the eligible patient resulting from treatment if the manufacturer or other person or entity has complied in good faith with the terms of the act.

**Source:** Laws 2018, LB117, § 11.  
Effective date July 19, 2018.

**PUBLIC LANDS, BUILDINGS, AND FUNDS**

**CHAPTER 72**  
**PUBLIC LANDS, BUILDINGS, AND FUNDS**

Article.

1. Lands Owned by the State. 72-101 to 72-109.
2. School Lands and Funds. 72-201 to 72-274.
3. Development of Mineral Lands. 72-301 to 72-314.
4. Preservation of Fort Property. 72-401 to 72-425.
5. Saline Lands. 72-501 to 72-504.
6. Jurisdiction Ceded to the United States. 72-601 to 72-607.
7. State Capital and Capitol Building. 72-701 to 72-731.
8. Public Buildings. 72-801 to 72-818.
9. Lease of School Lands for Oil and Gas. 72-901 to 72-912.
10. Building Funds. 72-1001 to 72-1011.
11. Standards for Public Buildings. Transferred or Repealed.
12. Investment of State Funds.
  - (a) Nebraska State Funds Investment Act. 72-1201 to 72-1260.
  - (b) Nebraska Capital Expansion Act. 72-1261 to 72-1269.
  - (c) South African Investments. 72-1270 to 72-1276. Repealed.
  - (d) Review of Nebraska Investment Council. 72-1277, 72-1278.
13. Publicly Owned Lands.
  - (a) Publicly Owned Farm Lands. 72-1301 to 72-1305.
  - (b) Virgin Prairie. 72-1306 to 72-1308.
14. State Office Building. 72-1401 to 72-1416.
15. Political Subdivision Delinquent Accounts. 72-1501 to 72-1503.
16. Debts Owed to State. 72-1601.
17. Small Business Incubators. 72-1701 to 72-1712.
18. Joslyn Castle. Repealed.
19. Nebraska Tree Recovery Program. 72-1901 to 72-1904.
20. Niobrara River Corridor. 72-2001 to 72-2012.
21. Governor's Residence. 72-2101 to 72-2105.
22. Nebraska State Capitol Preservation and Restoration Act. 72-2201 to 72-2214.
23. Public Facilities Construction and Finance Act. 72-2301 to 72-2310.
24. Ferguson House. 72-2401.
25. Nebraska Incentives Fund. 72-2501.

**Cross References**

**Constitutional provisions:**

- Acceptance of money or property for sectarian purposes prohibited, see Article VII, section 11, Constitution of Nebraska.
- Board of Educational Lands and Funds, created, see Article VII, section 6, Constitution of Nebraska.
- Donation of public lands prohibited, see Article III, section 21, Constitution of Nebraska.
- Mineral or other natural resources in state lands:
  - Alienation prohibited, see Article III, section 20, Constitution of Nebraska.
  - Leasing or development permitted, see Article III, section 20, Constitution of Nebraska.
- Railways are public highways, see Article X, section 4, Constitution of Nebraska.
- Tax-exempt status of property of state and governmental subdivisions, see Article VIII, section 2, Constitution of Nebraska.

**Conveyances relating to public lands and improvements**, see sections 76-277 to 76-287.

**Counties:**

- County seat, location upon public land, see section 22-208.
- Roads, acquisition of public lands for, see section 39-1703.
- Sale or lease of public grounds and buildings, see section 23-107.

**Deposit and investment of public funds**, see Chapter 77, article 23.

**Drainage assessments on public lands**, see Chapter 31, article 6.

**Drainage districts**, right-of-way across state lands granted to, see section 31-354.

**Electric service facilities**, acquisition of right-of-way for, see section 70-301.

**Eminent domain:**

- Pipelines on public lands, see section 57-1105.
- School districts, powers, see sections 79-1095 and 79-1096.
- State powers, procedure, see Chapter 76, article 7.

**Interest in public grounds**, cannot arise by operation of law, see section 39-1404.

**Irrigation:**

§ 72-101

**PUBLIC LANDS, BUILDINGS, AND FUNDS**

- Districts, right-of-way granted across state lands, see section 46-153.
- Use of state lands for, see sections 46-244 to 46-251.
- Liquor consumption on public property forbidden**, see section 53-186.
- Public parks:**
  - Municipalities may convey to school districts, see sections 79-10,108 and 79-10,109.
  - School districts may not condemn for school sites, see section 79-1096.
- Records of state lands**, see section 84-401.
- Road improvement district**, special assessment on public lands, see section 39-1618.
- School districts**, power to exercise eminent domain, see sections 79-1095 and 79-1096.
- School funds**, in lieu of tax payments for public lands, see section 79-1036.
- School sites on state school lands**, acquisition by school districts, see section 79-1097.
- State highways**, acquisition of state lands for, see section 39-1323.
- Taxation:**
  - Improvements on leased lands taxable, see section 77-1374.
  - Public lands exempt, see section 77-202.
  - Tax sale of school land, interest acquired by purchaser, see section 77-1848.
- War monuments or memorials**, location on public lands authorized, see section 80-201.

**ARTICLE 1**

**LANDS OWNED BY THE STATE**

Section

- 72-101. Sale or lease; how validated.
- 72-102. Public land; confirmed to the state; where recorded.
- 72-103. Public land; confirmation; record; fee.
- 72-104. Public land; record of confirmation; receipt as evidence.
- 72-105. Shelterbelts; cooperation with federal government.
- 72-106. Shelterbelts; agreements; contents; recording.
- 72-107. Shelterbelts; no expenditures authorized.
- 72-108. Conveyances of real estate; custody after recording; exception.
- 72-109. Repealed. Laws 1988, LB 813, § 1.

**72-101 Sale or lease; how validated.**

In cases in which contracts for the sale or lease of lands owned by the state have been duly signed, executed and delivered to the purchaser or purchasers or lessees named in such contracts, by the proper state officers, the omission on the part of the proper officers to have first offered such lands at public sale shall not invalidate the private sales or leasing of such lands; but the purchaser or purchasers or lessees in such contracts mentioned, or their assignees, upon performance by them of the covenants and conditions on their part, by the terms of such contracts to be done, kept and performed, shall be entitled to a deed or contract of sale from the state for such lands; and the proper officers of the state in such cases are authorized and directed to make, execute and deliver to such purchaser or purchasers or lessees, or their assignees, deeds or contracts of sale from the state, which deeds, when properly executed and delivered, shall convey all right, title and interest of the state in and to the lands described therein.

**Source:** Laws 1887, c. 54, § 1, p. 524; R.S.1913, § 5838; C.S.1922, § 5174; C.S.1929, § 72-101; R.S.1943, § 72-101.

**72-102 Public land; confirmed to the state; where recorded.**

Whenever any communication shall be received by the Governor, or by any of the departments of the state government, from the Secretary of the Interior, when or whereby any lands or selection thereof shall be confirmed or certified to this state under or by virtue of any grant or Act of Congress, it shall be the duty of the Governor to cause a copy to be prepared, certified under the State

Seal, and recorded in each of the counties of this state in which any of the lands in such communication are situated.

**Source:** Laws 1872, § 2, p. 7; R.S.1913, § 5839; C.S.1922, § 5175; C.S. 1929, § 72-102; R.S.1943, § 72-102.

**72-103 Public land; confirmation; record; fee.**

It shall be the duty of the several county clerks to whom any such copy shall be presented to record it in the books in which land patents are or may be recorded, and in the order in which such copy may be received. The clerks shall be entitled to the same fees for recording such copies as are allowed by law for recording deeds, which fees shall be paid them out of the General Fund upon the warrant of the Director of Administrative Services.

**Source:** Laws 1872, § 3, p. 7; R.S.1913, § 5840; C.S.1922, § 5176; C.S. 1929, § 72-103; R.S.1943, § 72-103.

**72-104 Public land; record of confirmation; receipt as evidence.**

Each such copy, the record thereof, or a transcript of such record, certified under the hand and seal of the county clerk in whose office the same shall be recorded, shall be received in all courts and places whatever as evidence of each and every fact and thing therein stated, as well as of the absolute title of the United States in and to the lands therein described at the date of such communication.

**Source:** Laws 1872, § 4, p. 8; R.S.1913, § 5841; C.S.1922, § 5177; C.S. 1929, § 72-104; R.S.1943, § 72-104.

**72-105 Shelterbelts; cooperation with federal government.**

The Board of Educational Lands and Funds may enter into cooperative agreements with the officers and agents of the United States of America for the improvement by the United States of state educational and other lands, not under the control of the Board of Educational Lands and Funds, by the establishment and maintenance thereon of shelterbelts composed of trees, other plants, and necessary protective structures and works.

**Source:** Laws 1935, c. 144, § 1, p. 538; C.S.Supp.,1941, § 72-108; R.S. 1943, § 72-105.

**72-106 Shelterbelts; agreements; contents; recording.**

Every such agreement shall describe particularly the land to be covered by the shelterbelt, and shall be recorded in the county where such land is situated; and, thereafter, all leases, sales, and other disposition of such land shall be subject to such agreement.

**Source:** Laws 1935, c. 144, § 2, p. 538; C.S.Supp.,1941, § 72-109; R.S. 1943, § 72-106.

**72-107 Shelterbelts; no expenditures authorized.**

Sections 72-105 to 72-107 shall not be construed to authorize the Board of Educational Lands and Funds to spend any funds which may be under its jurisdiction, nor to incur indebtedness, under the above-mentioned agreements.

**Source:** Laws 1935, c. 144, § 3, p. 538; C.S.Supp.,1941, § 72-110; R.S. 1943, § 72-107.

**72-108 Conveyances of real estate; custody after recording; exception.**

All deeds or other instruments conveying any interest in lands to the State of Nebraska, or to any board, department, or commission thereof, shall be carefully deposited in the office of the Board of Educational Lands and Funds for safekeeping after they have been duly recorded in the office of the register of deeds in the county where the real estate is located. This section shall not apply to deeds or other instruments conveying any interest in lands to the Department of Transportation or the Game and Parks Commission.

**Source:** Laws 1957, c. 301, § 1, p. 1105; Laws 1965, c. 433, § 1, p. 1381; Laws 2017, LB339, § 246.

**Cross References**

Records of state lands, see section 84-401.

**72-109 Repealed. Laws 1988, LB 813, § 1.****ARTICLE 2****SCHOOL LANDS AND FUNDS****Cross References****Constitutional provisions:**

Board of Educational Lands and Funds, see Article VII, section 6, Constitution of Nebraska.

Funds for common school purposes:

Distribution, see Article VII, section 9, Constitution of Nebraska.

Enumeration of funds, see Article VII, section 7, Constitution of Nebraska.

Fines, penalties, and license money, see Article VII, section 5, Constitution of Nebraska.

Trust funds, state educational funds are, see Article VII, section 8, Constitution of Nebraska.

**Apportionment of school funds**, see Chapter 79, article 10.

**Bail forfeitures**, credited to school fund, see section 29-2708.

**Eminent domain:**

Pipelines, easements across public lands, see section 57-1103.

School districts, power to exercise right, see sections 79-1095 and 79-1096.

**Fines**, credited to school fund, see section 29-2708.

**Liquor license fees**, credited to school fund, see section 53-138.01.

**Mortgages held for permanent school fund**, sale authorized, see section 84-616.

**Motor vehicle fuels**, unlawful transportation of, proceeds of sale of confiscated vehicle and fuel credited to school fund, see sections 66-528 to 66-530.

**School district funds:**

Deposit of, see sections 77-2350 to 77-2352.

Investment of, see section 79-1043.

**Severance tax**, school lands, see section 57-705.

**State colleges**, funds of, see Chapter 85, article 3.

**Unclaimed personal property of decedent**, vests in county school fund, see section 23-1815.

**University of Nebraska**, funds of, see Chapter 85, article 1.

**Section**

- 72-201. Board of Educational Lands and Funds; members; appointment; terms; compensation; expenses; duties; qualifications; organization; chairperson; meetings; secretary.
- 72-201.01. Plan for sale of educational lands; plan for investment of funds; state investment officer; duties.
- 72-201.02. Repealed. Laws 1959, c. 266, § 1.
- 72-201.03. Board of Educational Lands and Funds; branch office; establish.
- 72-202. School funds; investments.
- 72-202.01. Repealed. Laws 1969, c. 584, § 134.
- 72-203. School lands; abstracts and records; where kept.
- 72-204. School lands; classification required; report.
- 72-205. School lands; changes in valuation; rental schedule; factors.
- 72-205.01. Rental schedules; semiannual rental; file in office of county treasurer; notice.
- 72-205.02. Rental schedules; when effective; petition; hearing.
- 72-205.03. Rental schedule; objections; petition; hearing; notice; examiner; evidence.
- 72-205.04. Rental schedule; hearing; examiner; record; board; powers.
- 72-206. Repealed. Laws 1967, c. 11, § 12.

## SCHOOL LANDS AND FUNDS

- Section
- 72-207. Repealed. Laws 1965, c. 435, § 5.
- 72-208. School lands; sale; deed; recording; received in evidence.
- 72-209. Repealed. Laws 1999, LB 779, § 51.
- 72-210. Repealed. Laws 1999, LB 779, § 51.
- 72-211. Repealed. Laws 1999, LB 779, § 51.
- 72-212. School lands; sale; public auction required.
- 72-213. School lands; eminent domain proceedings.
- 72-214. School lands; acquisition by school district.
- 72-215. School lands; acquisition by city or village; when authorized; limitations.
- 72-216. School lands; acquisition for airfields and monitor stations.
- 72-217. School land within defense project; purchase by United States.
- 72-218. School lands; acquisition by United States for water conservation.
- 72-219. School lands; acquisition by county for public purposes.
- 72-220. School lands; acquisition for cemetery purposes.
- 72-221. School lands; acquisition for public highway.
- 72-221.01. Established public roads; dedicated to county or Department of Transportation; value; payment.
- 72-222. School lands; acquisition by public districts; purposes.
- 72-222.01. School lands; acquisition by certain companies; purposes.
- 72-222.02. School lands; easement; acquisition by public districts; procedure.
- 72-223. School lands; condemnation; mineral rights reserved; lands acquired by Game and Parks Commission; disposition of mineral income.
- 72-224. Condemnation proceedings; procedure.
- 72-224.01. Repealed. Laws 1967, c. 466, § 12.
- 72-224.02. Condemnation proceedings; lease; valuation; adjustment; payment.
- 72-224.03. Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.
- 72-224.04. Repealed. Laws 1967, c. 466, § 12.
- 72-225. Condemnation proceedings; land under lease contract; interest of owner; value assessed.
- 72-226. Condemnation proceedings; damage to state-owned land; assessment.
- 72-227. State-owned land occupied by school, church, or cemetery; sale; procedure.
- 72-228. State-owned land occupied by school, church, or cemetery; sale; terms.
- 72-229. School lands; sale; county clerk; entry upon tax list.
- 72-230. School and saline lands; sale; when subject to taxation.
- 72-231. School lands; illegal tax; refund.
- 72-232. School lands; rules and regulations; limitation; soil conservation program.
- 72-232.01. Repealed. Laws 1999, LB 779, § 51.
- 72-232.02. School lands; administration costs; payment; cash fund.
- 72-232.03. School lands; irrigable; administration costs.
- 72-232.04. School lands; irrigable; development.
- 72-232.05. Repealed. Laws 1991, LB 13, § 1.
- 72-232.06. School lands; irrigable; lease; cost of tolls and assessments; collection.
- 72-232.07. School lands; administration costs; expenditures; Land Improvement Fund; created; purpose; investment.
- 72-233. School lands; application for lease; manner of leasing; bidding; conditions of lease.
- 72-233.01. School lands; lease; bidder; deposit before sale; return of deposit, when; forfeiture, when.
- 72-234. School lands; lease; terms; period of lease.
- 72-234.01. School lands; lease; nonresidents, when permitted; persons excepted.
- 72-234.02. School lands; lease; assignments; requirements.
- 72-234.03. Repealed. Laws 1959, c. 264, § 1.
- 72-234.04. Repealed. Laws 1959, c. 264, § 1.
- 72-235. School lands; lease; default; notice; forfeiture.
- 72-235.01. School lands; forfeited leases; improvements, how treated.
- 72-236. School lands; lease; notice of delinquency; how given.
- 72-237. School lands; lease; forfeiture; redemption; when allowed.
- 72-238. School lands; lease; forfeiture; movable improvements; sale; proceeds; disposition.
- 72-239. School lands; lease; default; extensions; when granted; conditions; lien.

## PUBLIC LANDS, BUILDINGS, AND FUNDS

- Section
- 72-240. Repealed. Laws 1953, c. 255, § 3.
- 72-240.01. Repealed. Laws 1972, LB 1410, § 3.
- 72-240.02. School lands; new leases; board; powers.
- 72-240.03. School lands; leases; reclassification when; rental.
- 72-240.04. School lands; leases; expiration.
- 72-240.05. School lands; leases; rental; complaints.
- 72-240.06. Repealed. Laws 1967, c. 467, § 17.
- 72-240.07. School lands; leases; permitted improvements; approval; exception; nonpermitted improvements; removal; requirements.
- 72-240.08. School lands; control of noxious weeds; cost.
- 72-240.09. School lands; control of noxious weeds; contract authorized.
- 72-240.10. School lands; leases; permitted improvements and growing crops of lessee; determine value; inspection; notice.
- 72-240.11. Improvements and growing crops of lessee; list; acknowledgment in writing; dispute; proceedings.
- 72-240.12. Permitted improvements and growing crops of lessee; appraisal; agreement as to value.
- 72-240.13. Permitted improvements and growing crops of lessee; value; failure to agree; petition; elect to remove and harvest; notice.
- 72-240.14. Permitted improvements and growing crops of lessee; petition; appraisers; appointment by court; meeting; notices.
- 72-240.15. Permitted improvements and growing crops of lessee; appraisers; qualified; oath.
- 72-240.16. Permitted improvements and growing crops of lessee; appraisers; inspection; hear interested parties.
- 72-240.17. Permitted improvements and growing crops of lessee; appraisers; assess value; report; file with county judge.
- 72-240.18. Permitted improvements and growing crops of lessee; appraisers; determination of value; factors.
- 72-240.19. Permitted improvements and growing crops of lessee; appraisers; valuation; appeal.
- 72-240.20. Permitted improvements and growing crops of lessee; appraisers; fee.
- 72-240.21. Permitted improvements and growing crops of lessee; value; announcement; sale price in addition; deposit; lien.
- 72-240.22. Permitted improvements and growing crops of lessee; separate improvements; disagreement on value; appraisal.
- 72-240.23. Permitted improvements and growing crops of lessee; lease of land; value of improvements and crops; new lessee; payment.
- 72-240.24. Repealed. Laws 1999, LB 779, § 51.
- 72-240.25. School lands; lessee; relinquish interest; notice.
- 72-240.26. Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.
- 72-241. School lands; leases; assignments; validity; recording.
- 72-242. School lands; publication of notice; fees.
- 72-243. Repealed. Laws 1967, c. 466, § 12.
- 72-244. School lands; adjoining cities or villages; subdivisions; leasing; amount; procedure.
- 72-245. School lands; waste or trespass; penalty.
- 72-246. School lands; leases; covenant required.
- 72-247. School lands; waste or trespass; violations; submission to grand jury.
- 72-248. School lands; timber; sale; public auction.
- 72-249. Federal funds; receipt; deposit; how allocated.
- 72-250. Permanent school fund; sale of public lands; credit to state.
- 72-251. Permanent school fund; collections on judgments; payable to fund.
- 72-252. Repealed. Laws 1969, c. 584, § 134.
- 72-253. School lands; exchange for federal or other lands; board; powers and duties.
- 72-254. School and federal lands; exchange; lease; renewal; removal of improvements.
- 72-255. School and federal lands; exchange; lessee's interest; release; condemnation; procedure.



- Section
- 72-256. School and federal lands; exchange; minimum appraised value.
- 72-257. School lands; expiration of lease; sale; mineral rights; appraisal; limitation on price; contiguous tracts; how treated.
- 72-257.01. School lands; priorities for sale; request to sell.
- 72-258. School lands; sale; notice; terms; partition; settlement; forfeiture of deposit; when.
- 72-258.01. School lands; unsold; lease; duration.
- 72-258.02. National System of Interstate and Defense Highways; construction on school lands; sale; procedure.
- 72-258.03. School lands; sale; appraised value.
- 72-259. School lands; sale; proceeds; disposition.
- 72-259.01. School lands; adjacent to city of the first or second class; plat; request for annexation; filing.
- 72-259.02. School lands; adjacent to city of the first or second class; plat; contents; certification.
- 72-259.03. School lands; adjacent to city of the first or second class; annexation; vote.
- 72-259.04. School lands; adjacent to city of the first or second class; annexation; ordinance; contents.
- 72-259.05. School lands; adjacent to city of the first or second class; annexation; filings required.
- 72-259.06. School lands; adjacent to city of the first or second class; dedication of streets and alleys.
- 72-259.07. School lands; adjacent to city of the first or second class; sale; taxes; when.
- 72-259.08. School lands; subdivide; plat; filing; dedication of streets and alleys.
- 72-260. Repealed. Laws 1967, c. 466, § 12.
- 72-261. School lands; acquisition by Game and Parks Commission; procedure; approval by Governor.
- 72-262. Resurvey of school lands; Grant and Hooker Counties; acceptance.
- 72-263. Resurvey of school lands; Morrill County; acceptance.
- 72-264. Repealed. Laws 1957, c. 304, § 1.
- 72-265. Repealed. Laws 1957, c. 304, § 1.
- 72-266. Board of Educational Lands and Funds; authority to sell personal property.
- 72-267. School lands; Cherry County; designation; subdivision; improvements; sale.
- 72-268. School lands; Cherry County; funds; deposit; transfer.
- 72-269. School lands; Dawes County; transfer to Game and Parks Commission.
- 72-270. Production of wind or solar energy; agreements; sections applicable.
- 72-271. Production of wind or solar energy; agreements; terms, defined.
- 72-272. Production of wind energy or solar energy; agreements; board; powers.
- 72-273. Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.
- 72-274. Wind energy or solar energy agreement; rules and regulations.

**72-201 Board of Educational Lands and Funds; members; appointment; terms; compensation; expenses; duties; qualifications; organization; chairperson; meetings; secretary.**

(1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall

appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms for which they are appointed. If the Legislature is not in session when such members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter convenes. The compensation of the members shall be fifty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each member shall be paid his or her necessary traveling expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold as provided in sections 72-201 to 72-251 and shall have the general management and control of such lands and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

**Source:** Laws 1899, c. 69, § 1, p. 300; R.S.1913, § 5845; C.S.1922, § 5181; C.S.1929, § 72-201; Laws 1935, c. 163, § 1, p. 594; Laws 1937, c. 162, § 1, p. 628; C.S.Supp.,1941, § 72-201; R.S.1943, § 72-201; Laws 1945, c. 175, § 1, p. 559; Laws 1951, c. 338, § 3, p. 117; Laws 1953, c. 252, § 1, p. 857; Laws 1955, c. 276, § 1, p. 874; Laws 1955, c. 277, § 1, p. 877; Laws 1961, c. 282, § 5, p. 822; Laws 1965, c. 434, § 1, p. 1383; Laws 1969, c. 589, § 1, p. 2438; Laws 1981, LB 204, § 141; Laws 1999, LB 779, § 12; Laws 2011, LB332, § 1; Laws 2014, LB967, § 3.

#### Cross References

##### Constitutional provisions:

Board of Educational Lands and Funds, duties, membership, see Article VII, section 6, Constitution of Nebraska.

**Fees**, see sections 25-1280 and 33-104.

**Other provisions relating to the board**, see Chapter 84, article 4.

**State-owned geothermal resources**, authority to lease, see section 66-1104.

Amendments of section 1, Article IV of the Constitution did not expressly or by implication repeal existing statutes imposing duties and obligations on the Commissioner of Public Lands and Buildings. *Swanson v. State*, 132 Neb. 82, 271 N.W. 264 (1937).

Statute fixes the times at which board should meet and transact their business. *State v. Bass*, 131 Neb. 592, 269 N.W. 68 (1936).

The provision of this section as to rule making refers only to regulation of the management and control of school lands, and does not confer power upon the Board of Commissioners to convey such lands or any rights therein in excess of that provided by statute. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

The Board of Educational Lands and Funds acts by a majority of its members who have equal authority, and, hence, employment of an attorney to represent the board must be by the board itself and not by one of its members. *Follmer v. State*, 94 Neb. 217, 142 N.W. 908 (1913), *Am. Ann. Cas.* 1914D 151 (1913).

**72-201.01 Plan for sale of educational lands; plan for investment of funds; state investment officer; duties.**

(1) The Board of Educational Lands and Funds shall prepare a plan for the sale of educational lands over which the board has general management and control on July 19, 1996. The plan shall be submitted to the Education Committee of the Legislature on or before December 1, 1996. The plan shall provide for the sale of enough of the total of the educational lands by January 1, 2008, to result in one-fourth of the value of the school trust permanent portfolio being invested by the board in real property located within the State of Nebraska and the remaining three-fourths of the value of the school trust permanent portfolio being invested by the state investment officer. The plan shall be implemented beginning on July 1, 1997. In no case shall the plan or any part of it be executed if such execution violates the fiduciary duties of the board.

(2) Any sale under this section shall not include mineral rights.

(3) The state investment officer shall prepare a plan for investment of the funds derived from the sale of educational lands under the board's plan developed under this section. The state investment officer's plan shall be submitted to the Education Committee of the Legislature on or before December 1, 1996. The plan shall include estimated rates of return for the invested funds.

(4) For purposes of this section, value of the school trust permanent portfolio means the total fair market value of the educational lands and of all stocks, bonds, and other assets comprising the permanent school fund.

**Source:** Laws 1996, LB 1205, § 1.

**72-201.02 Repealed. Laws 1959, c. 266, § 1.**

**72-201.03 Board of Educational Lands and Funds; branch office; establish.**

The Board of Educational Lands and Funds shall have authority to establish and maintain a branch office in the state as the board shall designate.

**Source:** Laws 1961, c. 348, § 1, p. 1107.

**72-202 School funds; investments.**

The Board of Educational Lands and Funds shall notify the state investment officer of the funds derived from the sale of school lands. Any such funds and the interest therefrom shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The state investment officer shall manage the funds as follows: (1) When necessary to pay a premium for bonds for such funds, the amount of the premium shall be amortized over the term of the bonds from the interest received on such bonds; and (2) when bonds for such funds are purchased at a

discount, the amount of the discount shall be used to purchase additional bonds.

**Source:** Laws 1899, c. 69, § 2, p. 301; Laws 1909, c. 129, § 1, p. 473; R.S.1913, § 5846; Laws 1917, c. 113, § 1, p. 285; C.S.1922, § 5182; C.S.1929, § 72-202; Laws 1931, c. 119, § 1, p. 349; Laws 1933, c. 141, § 1, p. 551; Laws 1937, c. 159, § 1, p. 622; C.S.Supp.,1941, § 72-202; R.S.1943, § 72-202; Laws 1951, c. 235, § 1, p. 840; Laws 1959, c. 263, § 11, p. 943; Laws 1969, c. 584, § 76, p. 2392; Laws 1971, LB 52, § 1; Laws 1983, LB 238, § 1; Laws 1995, LB 7, § 83; Laws 1999, LB 779, § 13.

#### Cross References

For other investment provisions, see sections 77-2204 and 77-2205.

Nebraska Capital Expansion Act, see section 72-1269.

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

Permanent Endowment Fund, see section 85-123.

State colleges, endowment fund, see section 85-317.

#### **72-202.01 Repealed. Laws 1969, c. 584, § 134.**

#### **72-203 School lands; abstracts and records; where kept.**

The Board of Educational Lands and Funds shall keep in its office a full and complete abstract of all educational lands of the State of Nebraska, and such other records as are necessary to show the condition of each tract of land from the time title was acquired by the state.

**Source:** Laws 1899, c. 69, § 3, p. 301; R.S.1913, § 5847; C.S.1922, § 5183; C.S.1929, § 72-203; Laws 1935, c. 163, § 2, p. 594; C.S.Supp.,1941, § 72-203; R.S.1943, § 72-203.

#### **72-204 School lands; classification required; report.**

The Board of Educational Lands and Funds shall cause school land to be classified for rental purposes (1) at least once each five years, (2) each time that the land is leased or that an assignment of a lease is made, and (3) when the board deems it to be in the best interest of the state. The leasing of the land shall be regulated by sections 72-232 to 72-239. When a lease is offered for sale, the new rental shall be made public. When the board has ordered the reclassification of any of the school lands in any county, it shall prescribe the method and promulgate rules governing the classification of educational lands. It shall have a classification of all the educational lands in the county prepared by a competent person, who shall make a detailed field examination of each forty-acre tract of educational lands for the purpose of obtaining information as to the type and rating of the soil, its adaptability, the topographical character of the land, and the location and number of acres of each type. His or her report of such field examination shall be prepared in the form of a detailed map with complete explanations and shall be filed with the board. The board may employ private appraisal firms to aid it in determining the value of educational lands.

**Source:** Laws 1899, c. 69, § 4, p. 301; R.S.1913, § 5848; Laws 1921, c. 80, § 1, p. 289; C.S.1922, § 5184; C.S.1929, § 72-204; Laws 1933, c. 142, § 1, p. 553; Laws 1935, c. 163, § 3, p. 594; C.S.Supp.,1941, § 72-204; R.S.1943, § 72-204; Laws 1953, c. 253, § 1, p. 859; Laws 1999, LB 779, § 14.

Administrative determination of value of school lands is for the purpose of securing a basis for fixing the annual rent. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

This section must be construed to require the state's rights and interest in the land to be appraised, which does not include improvements by settlers upon indemnity school lands which by the act of 1875 belonged to such settlers. *State v. McCright*, 76 Neb. 732, 108 N.W. 138 (1906), rehearing denied 76 Neb. 738, 112 N.W. 315 (1907).

**72-205 School lands; changes in valuation; rental schedule; factors.**

All school land shall be subject to lease at fair market rental as determined by the Board of Educational Lands and Funds. When the board deems it expedient to raise or lower the rental and the appraised rental valuation of school lands, the board shall adopt rental schedules according to classification and schedules of valuations for the counties involved. In arriving at such rental schedules, the board shall consider the rental of other lands similarly situated and any other relevant factors bearing upon the rental of such school lands. The fair market rental as determined by the board shall then be capitalized at an annual rate of four percent to compute the appraised rental valuation.

**Source:** Laws 1921, c. 80, § 1, p. 289; C.S.1922, § 5184; C.S.1929, § 72-204; Laws 1933, c. 142, § 1, p. 553; Laws 1935, c. 163, § 3, p. 594; C.S.Supp.,1941, § 72-204; R.S.1943, § 72-205; Laws 1947, c. 235, § 1, p. 743; Laws 1949, c. 212, § 1, p. 602; Laws 1999, LB 779, § 15.

Administrative determination of value for rent purposes does not fix value which state must receive for land taken under eminent domain proceedings. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

**72-205.01 Rental schedules; semiannual rental; file in office of county treasurer; notice.**

After the adoption of new rental schedules according to classification and schedules of valuations, as provided by section 72-205, such schedules together with a tabulation of the valuation and the amount of semiannual rental of each lease shall be filed in the office of the county treasurer of such county not less than ninety days prior to the effective date of the new rentals. Notice of such filing shall be given by one publication in a newspaper of general circulation published within the county or, if more than one newspaper of general circulation is published in the county, then in two of such newspapers. If no newspaper is published in the county, it shall be so published in a newspaper of general circulation therein. The board shall further advise each lessee by mailing to his or her last address of record a letter or postal card notifying him or her of the amount of his or her semiannual rental.

**Source:** Laws 1949, c. 212, § 2, p. 602; Laws 1999, LB 779, § 16.

**72-205.02 Rental schedules; when effective; petition; hearing.**

Such new rental schedules according to classification and schedules of valuations shall become effective upon the first semiannual rental due date, which is ninety days or more from the date of the filing of the schedules in the office of the county treasurer, unless within forty-five days from the date of the publication of notice a petition signed (1) by at least twenty-five percent of the lessees in counties having less than one hundred leaseholders or (2) twenty-five of the lessees in counties having one hundred or more leaseholders within the county, requesting a hearing is filed in the office of the Board of Educational Lands and Funds.

**Source:** Laws 1949, c. 212, § 3, p. 603; Laws 1999, LB 779, § 17.

**72-205.03 Rental schedule; objections; petition; hearing; notice; examiner; evidence.**

Upon receipt of a petition bearing the requisite number of signatures as required by section 72-205.02, the Board of Educational Lands and Funds shall appoint an examiner who shall hold a meeting in the county seat of the county where such school lands are located to take testimony and to receive evidence as to the rental of all school lands, according to classification, in such county. Such evidence shall cover the rental of other lands similarly situated and any other relevant factors bearing upon the rental of such school lands. Notice of the time and place of such hearing shall be given by publication in a legal newspaper, published in the county where such school lands are situated, once each week for two consecutive weeks beginning at least twenty days prior to the date of the public hearing. In case no legal newspaper is published in the county, then the notice shall be published in a legal newspaper of general circulation in the county. The examiner conducting such hearing shall have the power to administer oaths.

**Source:** Laws 1949, c. 212, § 4, p. 603; Laws 1999, LB 779, § 18.

**72-205.04 Rental schedule; hearing; examiner; record; board; powers.**

A complete record shall be made of all testimony taken and evidence received at such hearing, which record shall be filed in the office of the Board of Educational Lands and Funds. The examiner conducting such hearing shall make, in writing, complete findings and recommendations to the board as to the value of school lands according to classification. If the board determines that a change in the rental is justified it may either raise or lower its rental schedules according to classifications and schedules of valuations previously adopted based upon the evidence produced at such hearing as shown by the record, the effective date to be the time originally fixed.

**Source:** Laws 1949, c. 212, § 5, p. 604; Laws 1999, LB 779, § 19.

**72-206 Repealed. Laws 1967, c. 11, § 12.****72-207 Repealed. Laws 1965, c. 435, § 5.****72-208 School lands; sale; deed; recording; received in evidence.**

When the Board of Educational Lands and Funds becomes satisfied that full payment has been made on any tract of land sold by the state, the Governor shall issue a deed to the purchaser or his assigns, and all deeds issued by him shall be countersigned by the Secretary of State and under the Great Seal of the state, and shall be attested by the secretary of the board and a record kept in his office. All deeds so issued shall be subject to record, and shall be received in evidence without acknowledgment, the same as deeds that have been acknowledged.

**Source:** Laws 1899, c. 69, § 7, p. 303; R.S.1913, § 5851; C.S.1922, § 5187; C.S.1929, § 72-207; Laws 1935, c. 163, § 6, p. 597; C.S.Supp.,1941, § 72-207; R.S.1943, § 72-208; Laws 1965, c. 435, § 1, p. 1385.

**72-209 Repealed. Laws 1999, LB 779, § 51.****72-210 Repealed. Laws 1999, LB 779, § 51.**

**72-211 Repealed. Laws 1999, LB 779, § 51.****72-212 School lands; sale; public auction required.**

No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction.

**Source:** Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S. 1943, § 72-212.

Under former statute, state board had no authority to dispose of mineral rights in school lands. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

permitted by the Legislature. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

The power of the Board of Commissioners to lease, sell, or dispose of school lands exists only insofar as it is directed or

**72-213 School lands; eminent domain proceedings.**

Educational lands belonging to the state may be acquired through the exercise of eminent domain proceedings for the special purposes mentioned in sections 72-214 to 72-226.

**Source:** Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-213.

Taking of educational land by eminent domain for county fair purposes is authorized. *State v. Cheyenne County*, 157 Neb. 533, 60 N.W.2d 593 (1953).

School lands cannot be taken from state by judicial process unless full value is paid to the state. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

**72-214 School lands; acquisition by school district.**

Any school district, in which there may be any educational lands, may acquire for school purposes any portion thereof, not exceeding forty acres.

**Source:** Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-214.

**72-215 School lands; acquisition by city or village; when authorized; limitations.**

Any city or village may acquire such educational lands not exceeding forty acres for solid waste disposal areas, sewage disposal purposes, necessary right-of-way for electric transmission lines, or for any other purpose, except park and recreational purposes, for which a city or village may condemn private lands.

**Source:** Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-215; Laws 1963, c. 415, § 1, p. 1337; Laws 1969, c. 590, § 1, p. 2441; Laws 1983, LB 29, § 1.

**72-216 School lands; acquisition for airfields and monitor stations.**

The United States of America, or any county, city or village of the State of Nebraska may acquire such educational lands necessary for public use for the development of radio monitor stations, aviation fields, and fields for aerial traffic.

**Source:** Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-216.

**72-217 School land within defense project; purchase by United States.**

The United States of America may purchase any educational lands located within the boundaries of any defense project.

**Source:** Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-217.

Legislature provided for a public offering, preceded by public notice, of all educational lands subject to lease. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

**72-218 School lands; acquisition by United States for water conservation.**

The United States of America may acquire such educational lands, or portions thereof, in subdivisions of not less than forty acres, located within the boundaries of the projects now authorized by the United States of America pursuant to Public Law 848, 76th Congress, entitled An Act Authorizing the Construction of Water Conservation and Utilization Projects in the Great Plains and Arid and Semiarid Areas of the United States, approved August 11, 1939, and all acts supplementary thereto, amendatory thereof, or appropriating funds for the purposes thereof.

**Source:** Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 71-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-218.

**72-219 School lands; acquisition by county for public purposes.**

The county board of any county, in which there are such educational lands, may acquire for public purposes any portion thereof, not exceeding forty acres.

**Source:** Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 254; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-219.

County may acquire educational land for county fair grounds. State v. Cheyenne County, 157 Neb. 533, 60 N.W.2d 593 (1953).

**72-220 School lands; acquisition for cemetery purposes.**

Any city, village, cemetery association or corporation for the control of cemeteries, may acquire, for cemetery and burial purposes, any of the educational land, not exceeding in the aggregate forty acres, and may purchase additional adjoining tracts not exceeding ten acres each, if and when it becomes necessary to enlarge such cemetery.

**Source:** Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c.



80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-220.

**72-221 School lands; acquisition for public highway.**

The Department of Transportation and the county board of any county may acquire land necessary to establish a public highway over or across any educational lands.

**Source:** Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-221; Laws 2017, LB339, § 247.

**72-221.01 Established public roads; dedicated to county or Department of Transportation; value; payment.**

All established public roads that have been established for a period of ten years or more on the section line along any side or part of the side of a section owned by the Board of Educational Lands and Funds, and on any part of a section that has an established meandering road not on the section line and under the jurisdiction of the Board of Educational Lands and Funds, shall be dedicated to the county for public use in the case of county roads, or to the State of Nebraska, Department of Transportation, for public use. The public road right-of-way so dedicated shall be no less than thirty-three feet from the section line, nor less than sixty-six feet through that part of the section where the established road meanders through the described section. Upon receipt of payment from any county or the department of the fair and reasonable market value of the right-of-way at the date the road was established, the Board of Educational Lands and Funds shall convey to the county or the department title to such road right-of-way. The instruments of conveyance shall be recorded in the office of the register of deeds.

**Source:** Laws 1973, LB 36, § 1; Laws 2017, LB339, § 248.

**72-222 School lands; acquisition by public districts; purposes.**

Any irrigation district, rural water district, public power district or public power and irrigation district, or natural resources district may acquire from the state any educational land, portion thereof, or interest therein for the purpose for which such districts are authorized by law to condemn private lands in this state. In addition, a natural resources district may acquire an easement or right-of-way for the purpose of constructing, replacing, operating, and maintaining structures which are a part of the program of work of the district.

**Source:** Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160,

§ 1, p. 574; R.S.1943, § 72-222; Laws 1963, Spec. Sess., c. 17, § 1, p. 148; Laws 1965, c. 436, § 1, p. 1388; Laws 1971, LB 513, § 1; Laws 1977, LB 510, § 7.

**72-222.01 School lands; acquisition by certain companies; purposes.**

Any manufacturing company, pipeline company, or telephone or telegraph company, incorporated or qualified to do business in this state, may acquire an easement or right-of-way for the purpose of constructing, replacing, and maintaining pipelines, power pumps, telephone and telegraph lines and appurtenances thereto, under and across any of the school lands, the title of which is vested in the State of Nebraska, as trustee for the common schools.

**Source:** Laws 1953, c. 258, § 1, p. 867; Laws 1957, c. 302, § 1, p. 1106; Laws 1967, c. 466, § 2, p. 1445.

**72-222.02 School lands; easement; acquisition by public districts; procedure.**

Any public body enumerated in section 72-222 may acquire an easement from the state on any educational land when such easement is for the purpose for which such public body is authorized by law to condemn private lands in this state. It shall not be necessary for the acquiring public body to follow the procedure established in section 72-224.03 to obtain such easement. The public body may obtain such easement by the filing of an application with the Board of Educational Lands and Funds. Such application shall describe the nature and purpose of the easement, shall contain a legal description of the easement, and shall name the public body seeking the easement. Upon receiving the application for easement the Board of Educational Lands and Funds shall either (1) deny the application or (2) grant the easement and place a value on the easement to be paid by the applicant. When placing a value on the easement the Board of Educational Lands and Funds shall take into consideration the board's responsibility to manage the educational lands in a manner consistent with that of a trustee acting in a fiduciary capacity. The public body applying for the easement shall then either (a) accept the Board of Educational Lands and Funds' value or (b) proceed according to section 72-224.03. Upon the granting of such easement, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the easement to the grantee for filing in the office of the register of deeds in the county or counties where the easement is located.

**Source:** Laws 1981, LB 121, § 2; Laws 1999, LB 779, § 20.

**72-223 School lands; condemnation; mineral rights reserved; lands acquired by Game and Parks Commission; disposition of mineral income.**

The condemnation proceedings provided in sections 72-213 to 72-222 shall not operate to deprive the State of Nebraska of any mineral rights in the lands taken for the special purposes authorized by said sections, and, except as to land acquired by the United States of America, when any such land shall cease to be used for the special purpose for which it was acquired, it shall revert to the State of Nebraska as educational land. On lands acquired in this manner by the Game and Parks Commission all mineral income shall accrue to the appropriate state school funds; *Provided*, that all mineral extraction and explo-

ration shall be conducted in a manner to be approved by both the Board of Educational Lands and Funds and the Game and Parks Commission.

**Source:** Laws 1941, c. 145, § 1, p. 576; C.S.Supp., 1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S. 1943, § 72-223; Laws 1965, c. 433, § 2, p. 1381.

Possibility of reverter to state was so remote as not to have any value in eminent domain proceedings. *State v. Cheyenne County*, 157 Neb. 533, 60 N.W.2d 593 (1953).

A condemner cannot acquire any mineral rights in land taken under eminent domain, and the value of such rights is to be excluded in determining compensation to be paid. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

Where the state had given a contract to sell school land by which it agreed to give a deed in fee simple, the fact that after

such contract was made the Constitution was amended making it illegal to deed away mineral rights on school lands would not prevent the state from conveying the land under terms of the original contract when payment in full was made. *Reavis v. State*, 140 Neb. 442, 300 N.W. 344 (1941).

Mineral rights in state school lands cannot be conveyed in the absence of legislative sanction for such disposition. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

### **72-224 Condemnation proceedings; procedure.**

All condemnations of educational lands shall be exercised in the manner set forth in section 72-224.03; *Provided*, condemnation proceedings may be brought by the United States of America in the district court of the United States of America.

**Source:** Laws 1943, c. 160, § 2, p. 574; R.S. 1943, § 72-224; Laws 1949, c. 213, § 1(1), p. 608; Laws 1951, c. 101, § 110, p. 499; Laws 1967, c. 466, § 3, p. 1445.

### **72-224.01 Repealed. Laws 1967, c. 466, § 12.**

### **72-224.02 Condemnation proceedings; lease; valuation; adjustment; payment.**

If the school land to be taken is held under lease, the fair and reasonable value of the interest of the state as trustee for the public schools in said land so taken shall be ascertained as is provided in section 72-224.03; *Provided*, if the condemner desiring to acquire such land from the board is unable to adjust the value of the improvements and any damage thereto, and the damage otherwise arising to the holder of the lease by the condemnation of his interest in the lease, if any, with the holder of the lease, the proceedings to ascertain such damage, if any, and to acquire the interest of the holder of the lease shall be had as is provided in section 72-224.03. The value of the improvements taken, the damage thereto, and any other damage to the holder of the lease, as above provided, shall be paid to the owner of the lease.

**Source:** Laws 1949, c. 213, § 1(3), p. 608; Laws 1951, c. 237, § 1, p. 843; Laws 1963, Spec. Sess., c. 17, § 2, p. 148; Laws 1967, c. 466, § 4, p. 1446.

### **72-224.03 Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.**

Except as otherwise provided in section 72-222.02, any public body that has or hereafter shall be granted by the Legislature the authority to acquire educational lands for public use shall be required to condemn the interest of the state, as trustee for the public schools, in educational lands in the following manner:

(1) The proceedings shall be had before a board consisting of (a) the superintendent of a school district offering instruction in grades kindergarten

through twelve, (b) a certified public accountant, and (c) a credentialed real property appraiser, all appointed by the Governor for a term of six years, except that of the initial appointees one shall serve for a term of two years, one for a term of four years, and one for a term of six years as designated by the Governor. The members of the board shall each receive fifty dollars for each day actually engaged in the performance of official duties and shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177 to be paid by the Board of Educational Lands and Funds;

(2) The condemnation proceedings shall be commenced by the filing of a plat and complete description of the lands to be acquired together with an application for that purpose with the secretary of the Board of Educational Lands and Funds. Notice of the pendency of such application and the date of hearing shall be given by serving a copy of the application, together with notice of the date of hearing, upon the Governor and the Attorney General. The date of hearing shall be not less than ten days from the date of the filing of the application;

(3) The condemner and the Board of Educational Lands and Funds may present evidence before the board of appraisers. The board shall have the power to administer oaths and subpoena witnesses at the request of either party or on its own motion;

(4) After hearing the evidence, the board of appraisers shall make the award and file same in the office of the Board of Educational Lands and Funds. Such award may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act; and

(5) Upon payment of the amount of the award by the condemner, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the award to the condemner for filing in the office of the register of deeds in the county or counties where the land is located. The filing of such certified copy of the award shall have the force and effect of a deed of conveyance of the real estate and shall constitute a transfer of the title thereto.

**Source:** Laws 1949, c. 213, § 1(3), p. 608; Laws 1951, c. 237, § 1, p. 843; Laws 1963, Spec. Sess., c. 17, § 3, p. 149; Laws 1967, c. 466, § 5, p. 1446; Laws 1969, c. 514, § 7, p. 2106; Laws 1979, LB 381, § 1; Laws 1981, LB 121, § 1; Laws 1981, LB 204, § 142; Laws 1988, LB 352, § 146; Laws 1990, LB 1153, § 56; Laws 1991, LB 203, § 3; Laws 1994, LB 1107, § 3; Laws 2006, LB 778, § 6.

#### Cross References

Administrative Procedure Act, see section 84-920.

**72-224.04 Repealed. Laws 1967, c. 466, § 12.**

**72-225 Condemnation proceedings; land under lease contract; interest of owner; value assessed.**

If the land to be taken is held under lease contract, the board of appraisers also shall make a finding as to the interest of the owner in such lease contract, if any, and such value shall be separately assessed.

**Source:** Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185;

Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 2, p. 574; R.S.1943, § 72-225; Laws 1967, c. 466, § 6, p. 1447.

Value of interests of state and lessee are required to be separately assessed, and the sum of the value of the separate interests may be more than the value of the land as an unencumbered whole. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

**72-226 Condemnation proceedings; damage to state-owned land; assessment.**

Any damage to the land of the state, in addition to the value of the land purchased, shall be assessed and included in the amount to be paid the state.

**Source:** Laws 1943, c. 160, § 2, p. 574; R.S.1943, § 72-226.

**72-227 State-owned land occupied by school, church, or cemetery; sale; procedure.**

If there is a schoolhouse, cemetery or church building located upon school land or land of the state which has been or may be sold to any individual, corporation or parties, such school district, church or association, with the written consent of the purchaser or occupant, may purchase land for the purposes specified, and obtain a deed from the state, at the price the purchaser, assignee or occupant is to pay. The sum so paid for the tract obtained for such special purpose shall be deducted from the price the original purchaser was to pay.

**Source:** Laws 1885, c. 84, § 3, p. 334; R.S.1913, § 5856; C.S.1922, § 5192; C.S.1929, § 72-212; R.S.1943, § 72-227.

**72-228 State-owned land occupied by school, church, or cemetery; sale; terms.**

Sales of land made for the special purpose mentioned in section 72-227 shall be for cash, and if there be buildings on such land belonging to the state, such buildings are to be appraised and sold separately.

**Source:** Laws 1885, c. 84, § 4, p. 334; R.S.1913, § 5857; C.S.1922, § 5193; C.S.1929, § 72-213; R.S.1943, § 72-228.

**72-229 School lands; sale; county clerk; entry upon tax list.**

Upon the sale of school lands, the Board of Educational Lands and Funds is directed to state the actual purchase price in the deed so that the amount actually paid will be known when the deed is recorded even though the recording is exempt from the documentary stamp tax. The county clerks of the respective counties are directed to enter such lands upon the tax list of the county upon the recording of such a deed.

**Source:** Laws 1899, c. 69, § 12, p. 305; R.S.1913, § 5858; C.S.1922, § 5194; C.S.1929, § 72-214; Laws 1935, c. 163, § 9, p. 602; C.S.Supp.,1941, § 72-214; R.S.1943, § 72-229; Laws 1999, LB 779, § 21.

**72-230 School and saline lands; sale; when subject to taxation.**

Educational or saline lands sold under the provisions of any law of this state, or such as have been sold, shall not be taxable until the right to a deed shall have become absolute, but the value of the interest of such purchaser shall be taxable, which interest shall be determined by the value of the land and improvements, less the amount due the state; *Provided*, when such land shall be situated within the limits of any city or village and shall have been subdivided into lots, then it shall be subject to all special assessments for sidewalk, grading, paving, guttering, curbing, sewerage, and all other municipal improvements, in the same manner as other lots and lands in such city or village, except that a sale of such school lots to collect such assessment or assessments shall only pass the interest or title of the purchaser from the state, his heirs or assigns, and his or their right to a conveyance of the same, upon the payment of any residue of the purchase price or interest.

**Source:** Laws 1899, c. 69, § 13, p. 305; Laws 1907, c. 135, § 1, p. 441; R.S.1913, § 5859; C.S.1922, § 5195; C.S.1929, § 72-215; R.S. 1943, § 72-230.

School lands that have been sold by the state under contract for benefits derived therein. *Morehouse v. Elkhorn River Drainage District*, 90 Neb. 406, 133 N.W. 446 (1911).  
are properly included in a drainage district, and are assessable

#### **72-231 School lands; illegal tax; refund.**

Money received by the county treasurers of the several counties within the State of Nebraska on account of taxes wrongfully levied on educational lands of the state held under lease shall be, by the respective county treasurers, repaid without interest to persons who paid the same, or their representatives, upon orders in that behalf made by the county board of the respective counties; but no order shall be made for such repayment except upon the production of the county treasurer's receipt for taxes so paid. The county board of any county where school lands have been wrongfully taxed, and the taxes have not yet been paid, shall order the county treasurer to cancel the same.

**Source:** Laws 1899, c. 69, § 14, p. 306; R.S.1913, § 5860; C.S.1922, § 5196; C.S.1929, § 72-216; R.S.1943, § 72-231; Laws 1999, LB 779, § 22.

#### **72-232 School lands; rules and regulations; limitation; soil conservation program.**

The Board of Educational Lands and Funds shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of school lands and to prescribe such terms and conditions of the lease, not inconsistent with sections 72-205, 72-232 to 72-235, 72-240.02 to 72-240.05, and 72-242, as it shall deem necessary to protect the interests of the state. The board shall adopt and enforce a soil conservation program. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry out soil conservation requirements as provided in the rules and regulations of the board shall be cause for cancellation of the lease. No individual, partnership, limited liability company, or corporation shall be entitled to hold under lease a total of more than six hundred forty acres of state educational lands, whether acquired by direct lease or by assignment. Such limitation shall not apply when the land to be leased is bounded entirely on one side thereof by lands owned or operated by such applicant or assignee.

**Source:** Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602;

C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(1), p. 570; R.S.1943, § 72-232; Laws 1947, c. 235, § 3, p. 744; Laws 1961, c. 349, § 1, p. 1108; Laws 1965, c. 438, § 1, p. 1391; Laws 1974, LB 894, § 1; Laws 1993, LB 121, § 457; Laws 1999, LB 779, § 23.

Under former law, leasing of more than six hundred forty acres of school land to one person is prohibited unless such person owns or operates land on two sides of school land to be leased. *Kidder v. Wright*, 177 Neb. 222, 128 N.W.2d 683 (1964).

With specified exceptions, no person is permitted to hold under lease more than six hundred forty acres of school land. *State v. Kidder*, 173 Neb. 130, 112 N.W.2d 759 (1962).

Under former law, all unsold school lands were subject to lease at an annual rental of six percent of the appraised value.

*State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

Where a contract for lease of a tract of school lands has been created through application to the county treasurer, and by mistake a later application by another for the same tract is accepted, a writ of mandamus to compel execution of a lease cannot be issued to the second claimant though he has complied with all conditions precedent. *State ex rel. O'Brien v. Board of Commissioners of Educational Lands and Funds*, 116 Neb. 261, 216 N.W. 818 (1927).

### **72-232.01 Repealed. Laws 1999, LB 779, § 51.**

### **72-232.02 School lands; administration costs; payment; cash fund.**

The Board of Educational Lands and Funds shall pay the costs of administering the unsold school lands out of receipts from school land income. A cash fund is hereby authorized and the State Treasurer shall, out of the receipts for school land income, deposit in such cash fund that amount appropriated by the Legislature for each fiscal year on the first day of each fiscal year.

**Source:** Laws 1967, c. 459, § 1, p. 1429; Laws 1978, LB 460, § 1.

### **72-232.03 School lands; irrigable; administration costs.**

The cost of administering unsold school lands shall include:

- (1) The cost of developing irrigable school lands, located within the boundaries of an irrigation district, so that such lands may benefit from irrigation;
- (2) The cost of accrued tolls and assessments on irrigable school lands located within the boundaries of an irrigation district; and
- (3) The cost of current tolls and assessments on irrigable school lands located within the boundaries of an irrigation district.

**Source:** Laws 1971, LB 581, § 1.

### **72-232.04 School lands; irrigable; development.**

The Board of Educational Lands and Funds is authorized to and shall take all necessary action for the development of irrigable school lands located within the boundaries of an irrigation district, so that such lands may benefit from irrigation. The cost of such development shall be paid by the board from funds available to the board for the administration of unsold school lands, and such costs shall be included in the costs certified to the State Treasurer pursuant to section 72-232.02.

**Source:** Laws 1971, LB 581, § 2.

### **72-232.05 Repealed. Laws 1991, LB 13, § 1.**

### **72-232.06 School lands; irrigable; lease; cost of tolls and assessments; collection.**

When any irrigable school lands located within the boundaries of an irrigation district are leased, the Board of Educational Lands and Funds shall collect

with the regular rental an amount sufficient to pay the cost of current tolls and assessments of the irrigation district on such land, and shall pay such tolls and assessments to the district each year. The amount so collected and paid by the board shall be a part of the cost of administering the school lands and shall be included in the costs certified to the State Treasurer pursuant to section 72-232.02.

**Source:** Laws 1971, LB 581, § 4.

**72-232.07 School lands; administration costs; expenditures; Land Improvement Fund; created; purpose; investment.**

The cost of administering unsold school lands shall include expenditures necessary for developing such school lands to their most productive use. All expenditures shall be directed by the board in exercising its responsibility as a trustee over the school land trust and shall not exceed twenty percent of all rental and bonus payments of the previous year, which amount shall be appropriated for each year to the board for payment of development and improvement costs completed and approved by the board upon contracts let for this purpose. All rental and bonus payment deductions as authorized by this section shall be remitted to the State Treasurer for credit to the Land Improvement Fund, which fund is hereby created, to be expended upon proper warrants in accordance with law. 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 1974, LB 894, § 4; Laws 1986, LB 258, § 14; Laws 1995, LB 7, § 84.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-233 School lands; application for lease; manner of leasing; bidding; conditions of lease.**

Applications to lease any school lands shall be made to the Board of Educational Lands and Funds. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit and that the applicant will not sublease or otherwise dispose of the same without the written approval of the board and will commit no waste or damage on the land nor permit others to do so. The Board of Educational Lands and Funds may, at least once in each year, designate a day and hour for offering, in a public manner at the office of the county treasurer in the respective counties, lease contracts on all the educational lands in each respective county which may be subject to lease at the time of such offering. The offering shall be announced in a public manner by publishing a notice thereof three weeks preceding the auction in one or more of the legal newspapers published or of general circulation in the county in which the unleased land is located. If the board is unable to have a representative attend the offering, the county treasurer may, upon the direction of the board, act for it. Adjournments may be taken from day to day until all of the lands have been offered. No lease shall be sublet or assigned without the written approval of the board.

**Source:** Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602;



C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 571; R.S.1943, § 72-233; Laws 1947, c. 235, § 4, p. 745; Laws 1963, c. 416, § 1, p. 1337; Laws 1967, c. 466, § 7, p. 1447; Laws 1993, LB 121, § 458; Laws 1999, LB 779, § 24.

Board authorized to readvertise sale of lease where upset bid received after public auction, but before board acceptance of highest bid. *Anderson v. Board of Educational Lands & Funds*, 198 Neb. 793, 256 N.W.2d 318 (1977).

A lease cannot be sublet or assigned without the consent of the Board of Educational Lands and Funds. *State v. Kidder*, 173 Neb. 130, 112 N.W.2d 759 (1962).

Cited in summarizing history of litigation over renewal of school land leases. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 159 Neb. 79, 65 N.W.2d 392 (1954).

Board of Educational Lands and Funds is vested with discretionary power in approving school land lease. *State ex rel. Raitt v. Peterson*, 156 Neb. 678, 57 N.W.2d 280 (1953).

Notice of sale at public auction is required. *State v. Cooley*, 156 Neb. 330, 56 N.W.2d 129 (1952); *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

Under former law, third party got lease if he offered greater amount at auction. *Propst v. Board of Educational Lands & Funds*, 156 Neb. 226, 55 N.W.2d 653 (1952).

Beneficiaries of trust can be protected by placing leases up at public auction. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 154 Neb. 244, 47 N.W.2d 520 (1951).

Leases are required to be made after public offering and competitive bidding. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

The auction of state school land leases, pursuant to this section, may not be conducted by the county clerk, but must be conducted by the commissioner of public lands and buildings, or, under his direction, by his deputy, or the treasurer of the county in which such lands are located. *Stock Yards Nat. Bank v. Wyman*, 130 Neb. 113, 264 N.W. 157 (1936).

### **72-233.01 School lands; lease; bidder; deposit before sale; return of deposit, when; forfeiture, when.**

In order for any person to be eligible to bid on a school land lease, he must file a bank draft, certified check or cash for each lease with the county treasurer of the county in which the land is located prior to the sale, payable to the Board of Educational Lands and Funds, equivalent to rent of the first year of the lease on each parcel or tract on which he contemplates bidding. Any bidder who is unsuccessful in the bidding shall have his deposit returned to him immediately after the acceptance of the bid by the Board of Educational Lands and Funds. The deposit of the acceptable bidder shall be applied either on the bonus bid or the rent for the first year. If the accepted bidder fails to pay either the bonus bid or rent for the first year of the lease, he shall forfeit the amount of the deposit and the Board of Educational Lands and Funds shall resubmit the land for bids and a new lease.

**Source:** Laws 1961, c. 350, § 1, p. 1104; Laws 1963, c. 416, § 2, p. 1339; Laws 1965, c. 437, § 1, p. 1390; Laws 1967, c. 466, § 8, p. 1448.

### **72-234 School lands; lease; terms; period of lease.**

The board shall, if the foregoing proceedings appear to be regular, issue to the applicant a lease on the land. Each lease shall contain a covenant or provision (1) that the Board of Educational Lands and Funds may, whenever such board deems it to be for the best interest of the state, adjust the rental of such lands; (2) that the lessee will not sublease or otherwise dispose of such lands without the written consent of the board and will commit no waste or damage on the land nor permit others to do so; (3) that the lessee will observe and carry out soil conservation requirements according to the rules and regulations of the board; (4) that the lessee will pay for the use of such lands the fair market rental as determined by the board; (5) that, upon a failure to pay any rental for a period of six months from the time the payment becomes due or upon failure to perform any of the covenants of the lease, the lease may be forfeited and fully set aside, as provided for in sections 72-235 to 72-239; (6) that the lessee will promptly pay the rental semiannually in advance; (7) that in the event the lessee shall fail to pay rental in advance by the due date, interest shall be assessed at an annual interest rate of nine percent until such time as

the rent is paid; and (8) that the premises will be surrendered at the expiration of the lease, unless renewed, or upon violation of any of the terms of the lease. Leases shall be for periods of five to twelve years less the period intervening between the date of the execution of the lease and December 31 of the previous year. The board may offer a lease for a period of less than five years if a lease failed to generate interest at an auction and if the board agrees that reducing the minimum lease term will attract a bid or bids for such a lease. When two or more contiguous tracts are under separate lease with different expiration dates, the board may, if it is deemed to be in the best interest of the state, offer leases for less than twelve years on tracts having the earlier lease expiration date, to coincide with the last expiring lease, in order that all contiguous lands eventually may be offered under one lease.

**Source:** Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 572; R.S.1943, § 72-234; Laws 1947, c. 235, § 5, p. 746; Laws 1949, c. 212, § 6, p. 604; Laws 1965, c. 438, § 2, p. 1392; Laws 1967, c. 466, § 9, p. 1449; Laws 1974, LB 894, § 2; Laws 1999, LB 779, § 25.

Board authorized to readvertise sale of lease where upset bid received after public auction, but before board acceptance of highest bid. *Anderson v. Board of Educational Lands & Funds*, 198 Neb. 793, 256 N.W.2d 318 (1977).

Improvements should be appraised as of the date of execution of lease. *Jessen v. Blackard*, 159 Neb. 103, 65 N.W.2d 345 (1954).

Cited in summarizing history of litigation over renewal of school land leases. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 159 Neb. 79, 65 N.W.2d 392 (1954).

Highest bidder at public sale is not entitled to lease until it has been approved by board. *State ex rel. Raitt v. Peterson*, 156 Neb. 678, 57 N.W.2d 280 (1953).

New leases run for period of twelve years. *State v. Cooley*, 156 Neb. 330, 56 N.W.2d 129 (1952); *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

School land lease is personal property. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

#### **72-234.01 School lands; lease; nonresidents, when permitted; persons excepted.**

No lease shall be made to any person who is a nonresident of the State of Nebraska, unless such nonresident owns lands in Nebraska adjoining such school land, nor to any person who will not operate the land for his own use and benefit.

**Source:** Laws 1949, c. 212, § 7, p. 605; Laws 1951, c. 238, § 1, p. 845; Laws 1961, c. 351, § 1, p. 1110.

#### **72-234.02 School lands; lease; assignments; requirements.**

No lease shall be assigned nor the assignment thereof approved by the Board of Educational Lands and Funds unless (1) the person to whom the lease is assigned is a resident of the State of Nebraska or, if a nonresident of the State of Nebraska, owns land adjoining the school land set forth in the lease to be assigned and (2) such assignee will operate the land for his own use and benefit.

**Source:** Laws 1949, c. 212, § 8, p. 605; Laws 1953, c. 254, § 1, p. 861.

Bonus was paid to get board to approve assignment. *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

In class action on behalf of all renewal leaseholders, this section could not be invoked where applicable only to some.

*Propst v. Board of Educational Lands & Funds*, 103 F.Supp. 457 (D. Neb. 1951).

#### **72-234.03 Repealed. Laws 1959, c. 264, § 1.**

**72-234.04 Repealed. Laws 1959, c. 264, § 1.****72-235 School lands; lease; default; notice; forfeiture.**

If any lessee of educational lands fails to perform any of the covenants of the lease or is in default of semiannual rental due the state for a period of six months, the Board of Educational Lands and Funds may forfeit the lease of such person. If the lessee is in default in the payment of rental, the board may cause notice to be given such delinquent lessee in accordance with section 72-236 that, if such delinquency is not paid within thirty days from the date of service of such notice by either registered or certified mail or the date of the first publication of such notice, his or her lease will be declared forfeited. If the amounts due are not paid within such time, the board may declare the lease forfeited and the land described therein shall revert to the state. Before a forfeiture of a lease shall be declared for a failure to perform the covenants of the lease other than the payment of rentals, the board shall give notice of such proposed forfeiture to such lessee, or to his or her personal representative or next of kin if he or she is dead, by either registered or certified mail, setting forth a time such a lessee, or his or her personal representative or next of kin, may show cause and have a hearing as to whether or not such lease shall be forfeited. The order of forfeiture shall be entered upon the records of the board. The board is required to serve such notice of delinquency and proceed with the forfeiture, as stated in such notice, at least once in each year. The provisions of this section and sections 72-236 to 72-239 shall apply to all lands heretofore or hereinafter leased as educational lands of this state.

**Source:** Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-235; Laws 1947, c. 235, § 6, p. 747; Laws 1957, c. 242, § 54, p. 863; Laws 1961, c. 351, § 2, p. 1110; Laws 1999, LB 779, § 26.

Right of redemption from forfeiture of contract of sale was governed by law in effect at time of sale. *Stoller v. State*, 171 Neb. 93, 105 N.W.2d 852 (1960).

Where bank was assigned lease as security and did not have actual possession of lands, it was not liable to state for delinquent rentals. *State ex rel. Johnson v. Commercial State Bank*, 142 Neb. 752, 7 N.W.2d 654 (1943).

To declare a forfeiture for failure to pay interest on a contract for the sale of school land is mandatory, and, when no such forfeiture is declared, the contract remains in full force and effect. *Mulhall v. State*, 140 Neb. 341, 299 N.W. 481 (1941).

The present provision of this section for service of notice of cancellation of a contract of sale of state school lands because of delinquency of interest payments may be made applicable to contracts issued prior to enactment of the amendment; and, if after notice is given and forfeiture is declared, the purchaser fails to redeem, all rights in such contract shall be lost. *Spahr v. Godfrey*, 130 Neb. 539, 264 N.W. 560 (1936).

Under former law, the requirement of this section that notice of default be served upon the lessee before a forfeiture can be declared is not met by mailing such notice in a registered letter to a deceased lessee, and until sufficient notice is given, a valid lease to another cannot be made. *State ex rel. Green v. Cowles*, 90 Neb. 839, 134 N.W. 959 (1912).

**72-235.01 School lands; forfeited leases; improvements, how treated.**

All right, title, and interest in any and all improvements to a lease forfeited for failure to pay rental pursuant to section 72-235 also shall be forfeited to the Board of Educational Lands and Funds until the rental has been paid in full. The board shall have the authority to offer forfeited leases for sale without regard to any improvements and growing crops thereon.

**Source:** Laws 1969, c. 591, § 2, p. 2443; Laws 1999, LB 779, § 27.

**72-236 School lands; lease; notice of delinquency; how given.**

The notice required by section 72-235 shall be given by either registered or certified letter or by publication for three weeks in a newspaper published or of

general circulation in the county where the land is located. In serving the notice of delinquency the Board of Educational Lands and Funds shall recognize as the lessee the person or persons whose name appears last of record in the office of the board.

**Source:** Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-236; Laws 1957, c. 242, § 55, p. 864; Laws 1999, LB 779, § 28.

#### **72-237 School lands; lease; forfeiture; redemption; when allowed.**

The owner of any lease forfeited as provided in section 72-235 may redeem by paying all delinquencies, fees, and costs of forfeiture at any time before the Board of Educational Lands and Funds completes the advertising of such land for lease at public auction.

**Source:** Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-237; Laws 1999, LB 779, § 29.

Holder of a lease of state school lands which has been declared forfeited for nonpayment of rentals may redeem from such forfeiture by paying all delinquencies, fees and costs of forfeiture at any time before such land is advertised to be leased at public auction. *Stock Yards Nat. Bank v. Wyman*, 130 Neb. 113, 264 N.W. 157 (1936).

An assignee of a lease of school lands, executed pursuant to Chapter 74, Laws 1883, who was delinquent in rental payments, was entitled to redeem from a forfeiture incurred by such delinquency at any time before such lands were released. *Hile v. Troupe*, 77 Neb. 199, 109 N.W. 218 (1906), affirmed on rehearing 84 Neb. 266, 121 N.W. 109 (1909).

#### **72-238 School lands; lease; forfeiture; movable improvements; sale; proceeds; disposition.**

Movable improvements on lands reverting to the state through forfeiture shall be sold under the direction of the Board of Educational Lands and Funds at public auction, and the proceeds received therefrom shall inure to the holder of the forfeited lease, after payment has been made to the state for delinquent interest or rental, expenses incurred in holding such auctions, and irrigation taxes due the irrigation district in which the land is situated.

**Source:** Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-238; Laws 1999, LB 779, § 30.

This section indicates that movable improvements are the property of the lessee. *Blomquist v. Board of Educational Lands & Funds*, 170 Neb. 741, 104 N.W.2d 264 (1960).

Legislature clearly intended that lessee should be encouraged to improve lands by good husbandry by providing for reim-

bursement for improvements and reducing land to cultivation. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

#### **72-239 School lands; lease; default; extensions; when granted; conditions; lien.**

The Board of Educational Lands and Funds may extend the time of payment of delinquent interest or rental when it deems it to be in the best interest of the state, and it has full assurance that such delinquent interest or rental will be paid. Such extensions shall be granted, upon proper application to the board,

and then only to the record owner of the lease who actually uses or occupies educational lands, for periods of one year, and shall bear interest the same as other delinquent rentals, and shall be upon condition the lease is assigned to the state as part assurance of payment. In the event the movable improvements on the land do not constitute sufficient security to justify an extension of time, the lessee may give a lien to the state on the growing crops thereon, if any.

**Source:** Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-239; Laws 1999, LB 779, § 31.

School lands are subject to an annual rental of six percent of the appraised value. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

Under prior law at the expiration of a lease on school lands executed prior to July 9, 1897, the only advantage afforded such

lessee is the right to obtain a renewal free from competition and at the previous rental rate. *Stanser v. Cather*, 85 Neb. 305, 123 N.W. 316 (1909), rehearing denied 85 Neb. 313, 124 N.W. 102 (1909).

### **72-240 Repealed. Laws 1953, c. 255, § 3.**

### **72-240.01 Repealed. Laws 1972, LB 1410, § 3.**

### **72-240.02 School lands; new leases; board; powers.**

If no such application for a new lease is received or if the applicant fails to meet the requirements for a new lease, the Board of Educational Lands and Funds may, at any time within three months after the expiration of the lease, enter into a lease with any other person it deems willing and able to meet the standards prescribed by the board in its rules and regulations at the rental rate for land of such classification.

**Source:** Laws 1947, c. 235, § 7(3), p. 749; Laws 1949, c. 212, § 10, p. 606; Laws 1999, LB 779, § 32.

If no application is made by lessee, board may enter into a lease with any person willing and able to meet statutory require-

ments. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 154 Neb. 244, 47 N.W.2d 520 (1951).

### **72-240.03 School lands; leases; reclassification when; rental.**

When the Board of Educational Lands and Funds deems it expedient, due to breaking or retirement of the land, erosion, resodding, or other causes, to reclassify the school land in any county, and at least once in every five-year period, it shall cause reclassification to be made of the land under lease. When this has been accomplished the new rental for each lease shall be computed by applying the new classification of the land to the rental schedules according to classification then in effect and which have been duly adopted by the Board of Educational Lands and Funds for the counties involved. Rental shall be paid by the lessee upon the basis of the new classification. Not more often than once in every two years the lessee may request the board to make a reclassification of the land he or she has under lease and it shall be the duty of the board, within six months after receipt of such request, to cause the classification to be reviewed.

**Source:** Laws 1947, c. 235, § 7(4), p. 749; Laws 1949, c. 212, § 11, p. 606; Laws 1999, LB 779, § 33.

### **72-240.04 School lands; leases; expiration.**

All leases hereafter entered into by the board shall be made by the board to expire on December 31 of a given year.

**Source:** Laws 1947, c. 235, § 7(5), p. 749.

**72-240.05 School lands; leases; rental; complaints.**

The Board of Educational Lands and Funds shall sit twice each year to hear complaints from lessees as to the rental of their leases and may take such action as it may find to be right and proper in regard thereto.

**Source:** Laws 1947, c. 235, § 7(6), p. 749; Laws 1949, c. 212, § 12, p. 607; Laws 1999, LB 779, § 34.

**72-240.06 Repealed. Laws 1967, c. 467, § 17.****72-240.07 School lands; leases; permitted improvements; approval; exception; nonpermitted improvements; removal; requirements.**

Before any buildings, wells, irrigation improvements, dams, or drainage ditches are placed upon school lands by a lessee, written approval must be obtained from the Board of Educational Lands and Funds, except necessary improvements for the temporary handling and sheltering of livestock, and such improvements where approval is secured shall be called permitted improvements and belong to the lessee and the lessee has the right to be paid a sum of money equal to the value which the improvements add to the value of the land by the buyer of the land or the new lessee in accordance with procedures as given in sections 72-240.10 to 72-240.23 and 72-258. The value to the land of each permitted improvement shall not exceed its replacement cost less depreciation. Any such improvements placed upon school lands before September 14, 1953, and any improvements which were bought by new lessees during an involvement by the state in the transferring of leases after September 14, 1953, shall be considered as authorized or permitted improvements whether or not approval has been secured from the board and shall belong to the lessee unless there has been a provision in the lease to the contrary or unless there has been some written agreement between the lessee and the board to the contrary. Any improvements placed upon school lands after September 14, 1953, where written approval for such improvements was not obtained from the board and where there was no involvement by the state in the transferring of leases or other written agreement with such lessees to the contrary, shall be called nonpermitted improvements and considered as owned by the lessee, whether or not the nonpermitted improvements are attached to the land, unless there has been a provision in the lease to the contrary, and, the lessee shall have the right either (1) to remove such improvements from the land any time during the term of the lease or within six months after the land is sold or leased to a new lessee, and when the nonpermitted improvements are removed the old lessee shall clean up the debris caused thereby or bury it at least three feet below the surface of the land and any basements or holes caused by the nonpermitted improvements shall be filled such that cultivated crops can be grown on the land or (2) to sell the nonpermitted improvements to the buyer of the land or the new lessee at prices agreed upon by the old lessee and the buyer or new lessee. If the parties cannot agree upon the prices of the nonpermitted improvements, or if the improvements are not removed from the land within six months after the land is sold or leased to a new lessee other than the old lessee, the improvements shall become the property of the state. The board shall notify the old lessee by certified letter of the name and address of the purchaser of the land or the new lessee within ten days after the land has been sold or leased to a party other than the old lessee. The board shall, at the same time, notify the old lessee how much money the old lessee shall have to place in escrow with

the county treasurer of the county in which the land is located for each nonpermitted improvement if the old lessee takes the option to remove any or all nonpermitted improvements to guarantee removal of debris and to do other things required by the board so as not to damage the land. The old lessee shall within thirty days after receipt of such certified letter notify the board which improvements he or she intends to remove from the land and which shall be left on the land and show proof of deposit of escrow money. If the debris is not removed and if other things required by the board are not done within the six-month period after the land is sold or leased, the old lessee shall forfeit the money placed in escrow to the state, and the board shall hire a contractor to do the things required of the old lessee in order that there not be damage to the land. Any money left in the escrow fund after being depleted by making payment to the contractor for the work done shall be remitted to the old lessee. The board shall have authority to sell any improvement left on the land.

**Source:** Laws 1953, c. 255, § 2, p. 863; Laws 1971, LB 413, § 1; Laws 1999, LB 779, § 35.

Where no permission by Board of Educational Lands and Funds was required before improvements were placed on lands by laws in effect at time lease was executed, tenant had compensable interest in grain bin erected on a permanent-type concrete foundation. *State v. Haberman*, 191 Neb. 127, 214 N.W.2d 266 (1974).

Lessee gains no interest in improvement constructed in 1954 for failure to comply with conditions precedent of this section. *State v. Bardsley*, 185 Neb. 629, 177 N.W.2d 599 (1970).

After 1953, tenant was required to obtain permission for placing of specified improvements on school land. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

#### **72-240.08 School lands; control of noxious weeds; cost.**

The Board of Educational Lands and Funds shall be responsible and make necessary expenditures for the control of noxious weeds on all school lands of the state. Any expenditure made by such board for the control of noxious weeds shall be considered a cost of administering unsold school lands.

**Source:** Laws 1965, c. 428, § 1, p. 1367; Laws 1978, LB 460, § 2.

#### **72-240.09 School lands; control of noxious weeds; contract authorized.**

The Board of Educational Lands and Funds shall have the power to contract with supervisors of weed eradication districts of this state or any private or commercial weed control service for the purpose of controlling noxious weeds on school lands.

**Source:** Laws 1965, c. 427, § 1, p. 1366; Laws 1978, LB 460, § 3.

#### **72-240.10 School lands; leases; permitted improvements and growing crops of lessee; determine value; inspection; notice.**

The Board of Educational Lands and Funds shall have the authority and duty, as specified in sections 72-240.10 to 72-240.23 and 72-258, to determine the value to the land of permitted improvements and growing crops, owned by the lessee of record, on educational lands of the State of Nebraska prior to the sale or lease of such lands. The value to the land of permitted improvements shall not exceed their replacement cost less depreciation. In making such determinations, the board shall notify the lessee that it intends to inspect the premises and shall attempt to so inspect at the convenience of the lessee.

**Source:** Laws 1967, c. 467, § 1, p. 1452; Laws 1971, LB 413, § 2; Laws 1999, LB 779, § 36.

**72-240.11 Improvements and growing crops of lessee; list; acknowledgment in writing; dispute; proceedings.**

The board shall determine what improvements and growing crops are on the land and develop a specific listing and detailed description of permitted and nonpermitted improvements owned by the lessee and by the State of Nebraska. Only those permitted improvements owned by the lessee shall be considered in determining the value of the lessee's interest therein. The listing of permitted improvements and growing crops shall be acknowledged and agreed upon in writing by both parties. In the event of a dispute regarding ownership of any improvements, either the board or the lessee may file an action in district court for a declaratory judgment.

**Source:** Laws 1967, c. 467, § 2, p. 1452; Laws 1971, LB 413, § 3.

Ownership of improvements on school lands determined pursuant hereto. State v. Rosenberger, 187 Neb. 726, 193 N.W.2d 769 (1972).

**72-240.12 Permitted improvements and growing crops of lessee; appraisal; agreement as to value.**

The board shall make an appraisal of the lessee's permitted improvements and growing crops and attempt to arrive at an agreement with the lessee as to the value of the permitted improvements owned by such lessee.

**Source:** Laws 1967, c. 467, § 3, p. 1452; Laws 1971, LB 413, § 4.

**72-240.13 Permitted improvements and growing crops of lessee; value; failure to agree; petition; elect to remove and harvest; notice.**

If the value to the land of any permitted improvements or growing crops cannot be agreed upon, either the board or the lessee may file a petition in the county court of the county wherein the land is situated to have the value to the land of the permitted improvements and growing crops determined. Prior to the filing of such petition the lessee shall have the right, by filing written notice with the board, to elect to remove prior to the expiration of the lease any permitted structural improvements, owned by him, which can be removed without damage to the land or other permitted improvements located on the land. The lessee shall also have the right, by filing written notice with the board, to elect to harvest any fall-seeded growing grain crops in lieu of compensation for the same.

**Source:** Laws 1967, c. 467, § 4, p. 1453; Laws 1971, LB 413, § 5.

**72-240.14 Permitted improvements and growing crops of lessee; petition; appraisers; appointment by court; meeting; notices.**

(1) Upon the filing of a petition under section 72-240.13, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not holders of leases of school lands, to serve as appraisers. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene in 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 value of the permitted improvements to the land and growing crops owned by the lessee at the time of termination of the occupying tenant's lease.



(2) Notice of the appointment of the appraisers and of the time and place of the meeting of the board of appraisers to have the value of the permitted improvements to the land and growing crops assessed shall be served upon both the board and the lessee by registered or certified mail at their last-known mailing addresses at least ten days prior to the meeting of the board of appraisers.

**Source:** Laws 1967, c. 467, § 5, p. 1453; Laws 1971, LB 413, § 6; Laws 1987, LB 601, § 2.

**72-240.15 Permitted improvements and growing crops of lessee; appraisers; qualified; oath.**

The appraisers shall be qualified by the county judge and an oath administered in the same manner as required by sections 76-707 and 76-708.

**Source:** Laws 1967, c. 467, § 6, p. 1453.

**72-240.16 Permitted improvements and growing crops of lessee; appraisers; inspection; hear interested parties.**

The appraisers shall carefully inspect and view the permitted improvements and growing crops to be valued and shall hear any party interested therein in reference to the value of the permitted improvements to the land and growing crops.

**Source:** Laws 1967, c. 467, § 7, p. 1453; Laws 1971, LB 413, § 7.

**72-240.17 Permitted improvements and growing crops of lessee; appraisers; assess value; report; file with county judge.**

After the inspection, view and hearing provided for in section 72-240.16 the appraisers shall assess the value to the land of the permitted improvements and growing crops as of the date of expiration of the lease on the land and shall make and file a report of such value in writing with the county judge and shall include in such report a list of the value to the land for each permitted improvement individually. Such report shall be filed with the county judge within ten days from the date of the hearing held by the appraisers.

**Source:** Laws 1967, c. 467, § 8, p. 1454; Laws 1971, LB 413, § 8.

**72-240.18 Permitted improvements and growing crops of lessee; appraisers; determination of value; factors.**

(1) The appraisers shall consider in determining the value of the permitted improvements the cost of the permitted improvement less any depreciation, obsolescence and any want of benefit to the land.

(2) In the case of growing crops the appraisers shall assess the value of the crop as of the date of expiration of the lease. The appraisers shall consider in the case of fall-seeded grain crops the cost of seed-bed preparation, fertilization, seed and seeding.

(3) In the case of perennial crops such as alfalfa the appraisers shall consider the costs of establishing such crop, its condition as of the expiration of the lease and normal expected remaining life.

**Source:** Laws 1967, c. 467, § 9, p. 1454; Laws 1971, LB 413, § 9.

**§ 72-240.18**

**PUBLIC LANDS, BUILDINGS, AND FUNDS**

In determining value of permitted improvements made by lessee of school lands, the value of the land means that amount of money that the improvement enhances, contributes, increases, or adds to the value of the land. *Pettijohn v. State Board of Educational Lands and Funds*, 204 Neb. 271, 281 N.W.2d 901 (1979).

In the absence of agreement, a tenant on school lands has a compensable interest in the crops growing thereon on the date of termination of his lease. *State v. Bush*, 188 Neb. 824, 199 N.W.2d 704 (1972).

Lessee's value in a growing crop is more than the cost of seed, preparation, and planting. *Friehe v. State*, 199 Neb. 504, 260 N.W.2d 188 (1977).

**72-240.19 Permitted improvements and growing crops of lessee; appraisers; valuation; appeal.**

(1) Appeals from the valuation set by the board of appraisers may be made by either party in the same manner as appeals from the award of a board of appraisers in condemnation proceedings as governed by sections 76-715 to 76-721. Those provisions shall apply as if the board is the condemner and the lessee is the condemnee.

(2) No bond shall be required of the board to cover the value to the land of the permitted improvements and growing crops found by the appraisers during the appeal.

**Source:** Laws 1967, c. 467, § 10, p. 1454; Laws 1971, LB 413, § 10.

Trial court is without authority to fix appraiser's fees and attorney's fees to be taxed against the Board of Educational Lands and Funds. *Pettijohn v. State Board of Educational Lands and Funds*, 204 Neb. 271, 281 N.W.2d 901 (1979).

**72-240.20 Permitted improvements and growing crops of lessee; appraisers; fee.**

The appraisers shall receive a reasonable fee, not to exceed fifty dollars each, for their services, to be fixed by the county judge, and the same shall be taxed to the lessee.

**Source:** Laws 1967, c. 467, § 11, p. 1454; Laws 1969, c. 589, § 2, p. 2440.

**72-240.21 Permitted improvements and growing crops of lessee; value; announcement; sale price in addition; deposit; lien.**

(1) When the land is put up for sale, the minimum sale price shall be determined as in section 72-258.

(2) At the time of sale or lease, but prior to the commencement of bidding, a representative of the board shall announce to all present the value to the land of the permitted improvements and growing crops for which the purchaser of the land or lease must pay the lessee as determined under sections 72-240.10 to 72-240.23 and 72-258 or by agreement and shall clearly state that the payment for these permitted improvements and growing crops shall be in addition to the price paid for the land or the lease.

(3) In making the publications required by section 72-233 or 72-258, the board shall include in those publications the determined value to the land of the permitted improvements and growing crops owned by the lessee of the land and shall clearly indicate that this amount is to be paid in addition to the price paid for the land or the lease.

(4) When the land is sold, the purchaser shall be instructed by the board that he or she must, within thirty days of the date of the sale, deposit the amount of value of the permitted improvements with the county treasurer of the county wherein the land is situated with instructions to the treasurer that the money be paid to the lessee upon notification of issuance of the deed or lease. The state

shall have a lien upon the funds so paid to the amount of any unpaid rent and interest on such lands due and owing to the state from the former lessee.

**Source:** Laws 1967, c. 467, § 12, p. 1455; Laws 1969, c. 591, § 1, p. 2442; Laws 1971, LB 413, § 11; Laws 1999, LB 779, § 37.

**72-240.22 Permitted improvements and growing crops of lessee; separate improvements; disagreement on value; appraisal.**

The permitted improvements and growing crops covered by sections 72-240.10 to 72-240.23 and 72-258 shall be deemed to be separate permitted improvements and if the board and the lessee agree as to the value of some permitted improvements but disagree as to the value of others, only those on which they do not agree need be appraised under the appraisal provisions of sections 72-240.10 to 72-240.23 and 72-258.

**Source:** Laws 1967, c. 467, § 13, p. 1455; Laws 1971, LB 413, § 12; Laws 1999, LB 779, § 38.

**72-240.23 Permitted improvements and growing crops of lessee; lease of land; value of improvements and crops; new lessee; payment.**

If land is not sold under the provisions of sections 72-240.10 to 72-240.23, 72-257, and 72-258 and is leased according to section 72-258.01, the new lessee shall pay to the old lessee the value of his or her permitted improvements as determined for sale purposes.

**Source:** Laws 1967, c. 467, § 14, p. 1455; Laws 1971, LB 413, § 13; Laws 1999, LB 779, § 39.

**72-240.24 Repealed. Laws 1999, LB 779, § 51.**

**72-240.25 School lands; lessee; relinquish interest; notice.**

Any lessee of educational lands may, subject to the approval of the board, relinquish his interest in such lease as of the following December 31 by notice to the Board of Educational Lands and Funds on or before November 30 of that year. The notice must be in writing signed and acknowledged by the lessee, and delivered to the office of the board.

**Source:** Laws 1974, LB 894, § 5.

**72-240.26 Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.**

The Board of Educational Lands and Funds and the Nebraska Investment Council shall jointly report annually to the Clerk of the Legislature, and such report shall contain anticipated future actions by the board as well as actions already taken. The report submitted to the Clerk of the Legislature shall be submitted electronically. The board's portion of the report shall include (1) with reference to each tract of land sold pursuant to section 72-201.01: (a) The legal description; (b) the unique characteristics of the land being sold; (c) the appraised value; (d) the sale price; (e) the amount of funds received in the calendar year covered by the report from the sale; (f) the disposition of the funds; (g) the total number of acres of any unsold educational lands remaining under the general management and control of the board by county; (h) the total appraised value of unsold land; and (i) the percentage of the investment portfolio remaining in real estate, including all nonagricultural real estate and

(2) the corresponding information for any land that has been acquired or traded. The council's portion of the report shall include a cost-benefit analysis which considers the land being sold versus the anticipated investment potential of proceeds resulting from the sale. The cost-benefit analysis model used shall be consistent with the standards of the investment industry at the time of the proposed sale. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the board.

**Source:** Laws 1974, LB 894, § 6; Laws 1979, LB 322, § 31; Laws 1996, LB 1205, § 2; Laws 2000, LB 1010, § 2; Laws 2012, LB782, § 129.

#### **72-241 School lands; leases; assignments; validity; recording.**

An assignment of a school land lease shall not be valid until recorded in the office of the Board of Educational Lands and Funds and shall not be eligible to such record if there are any payments of interest or rental due at the time the assignment is offered for record.

**Source:** Laws 1899, c. 69, § 18, p. 310; R.S.1913, § 5864; C.S.1922, § 5200; Laws 1923, c. 60, § 1, p. 183; C.S.1929, § 72-220; Laws 1935, c. 163, § 13, p. 606; C.S.Supp.,1941, § 72-220; R.S.1943, § 72-241; Laws 1999, LB 779, § 40.

Assignment of school land lease is not valid until recorded in the office of the Board of Educational Lands and Funds. *Kidder v. Wright*, 177 Neb. 222, 128 N.W.2d 683 (1964).

Assignments of school land leases are permitted, but to be effective against the state must be recorded. *State ex rel. John-*

*son v. Commercial State Bank*, 142 Neb. 752, 7 N.W.2d 654 (1943).

#### **72-242 School lands; publication of notice; fees.**

The publisher of any advertisement in connection with the forfeiture, leasing or sale of any educational lands shall be allowed the fees fixed by law for publishing legal notices, or standard commercial rates when the board elects to use commercial advertising.

**Source:** Laws 1899, c. 69, § 19, p. 310; R.S.1913, § 5865; Laws 1921, c. 80, § 3, p. 293; C.S.1922, § 5201; Laws 1927, c. 190, § 1, p. 545; C.S.1929, § 72-221; Laws 1933, c. 96, § 12, p. 391; Laws 1941, c. 180, § 3, p. 701; C.S.Supp.,1941, § 72-221; R.S.1943, § 72-242; Laws 1947, c. 235, § 8, p. 750; Laws 1974, LB 894, § 3.

#### **72-243 Repealed. Laws 1967, c. 466, § 12.**

#### **72-244 School lands; adjoining cities or villages; subdivisions; leasing; amount; procedure.**

Any portion of the lands of this state governed by sections 72-201 to 72-251, adjoining the site of any city or town, may be subdivided into lots and leased as herein provided. The Board of Educational Lands and Funds, being satisfied that by a division of any such tract into lots, the lease of the same can be made for a greater amount than if leased in tracts of forty acres, as herein provided, shall have the authority to employ the necessary surveyors, and cause such tracts to be subdivided into lots and tracts of such size as they may determine, and a plat of the same shall be made and filed for record in the office of the county clerk. Such lots shall be appraised by the appraisers to be appointed by the board, none of whom shall be occupants of the land to be leased. Tracts of

land so subdivided and appraised shall be leased according to the provisions of said sections. The board shall give thirty days' notice of such letting, and publish the same in a newspaper of general circulation published in the county in which said lots are situated. Each notice shall contain a list of the lots to be leased, and the appraised value of each. The leasing of such lots shall take place, on the day appointed, under the direction of the board, and shall be leased to the highest bidder, but in no case for less than six percent of the appraised value. Lots remaining unleased shall be again offered for lease at public auction at such time as the board shall direct, and the board may adjourn the leasing from day to day until all the lots are offered.

**Source:** Laws 1899, c. 69, § 20, p. 311; R.S.1913, § 5866; C.S.1922, § 5202; C.S.1929, § 72-222; Laws 1935, c. 163, § 15, p. 608; C.S.Supp.,1941, § 72-222; R.S.1943, § 72-244.

**72-245 School lands; waste or trespass; penalty.**

If any person shall commit waste or trespass, or other injury or damage, or destroy any of the trees upon any of the educational lands of this state referred to in sections 72-201 to 72-251, except as herein authorized, he shall be guilty of a Class II misdemeanor.

**Source:** Laws 1899, c. 69, § 21, p. 312; Laws 1909, c. 133, § 2, p. 482; R.S.1913, § 5867; C.S.1922, § 5203; C.S.1929, § 72-223; Laws 1935, c. 163, § 16, p. 609; C.S.Supp.,1941, § 72-223; R.S.1943, § 72-245; Laws 1977, LB 39, § 178.

**72-246 School lands; leases; covenant required.**

All leases executed after May 3, 1935, with respect to educational lands shall contain a covenant to the effect that no prairie lands shall be broken without written permission authorized by the Board of Educational Lands and Funds.

**Source:** Laws 1935, c. 163, § 16, p. 609; C.S.Supp.,1941, § 72-223; R.S.1943, § 72-246; Laws 1999, LB 779, § 41.

**72-247 School lands; waste or trespass; violations; submission to grand jury.**

A judge of the district court shall refer charges made under section 72-245 to the grand jury at each term for investigation, and it shall make presentment of all violations thereof.

**Source:** Laws 1899, c. 69, § 24, p. 312; R.S.1913, § 5868; C.S.1922, § 5204; C.S.1929, § 72-224; R.S.1943, § 72-247.

**72-248 School lands; timber; sale; public auction.**

The Board of Educational Lands and Funds may sell timber on educational lands whenever the board deems it for the best interest of school funds. Said timber shall be sold at public auction in accordance with rules and regulations adopted by the board.

**Source:** Laws 1899, c. 69, § 22, p. 312; R.S.1913, § 5869; C.S.1922, § 5205; C.S.1929, § 72-225; R.S.1943, § 72-248; Laws 1949, c. 214, § 1, p. 611.

**72-249 Federal funds; receipt; deposit; how allocated.**

The Governor of the state is empowered and directed to receive from the United States all money that may be due or may become due to the state, and it shall be his or her duty to deposit the same without delay in the treasury of the state, taking the State Treasurer's receipts therefor. All money received from the United States, for the particular benefit of any institution, department, or activity under the jurisdiction of the Department of Health and Human Services or the Department of Correctional Services, shall be paid to the particular institution, department, or activity for the benefit of which it was received, as directed by the proper department, and by such institution, department, or activity deposited with the State Treasurer not later than the first day of the month following that in which received.

**Source:** Laws 1899, c. 69, § 31, p. 314; R.S.1913, § 5871; Laws 1919, c. 119, § 1, p. 284; C.S.1922, § 5206; C.S.1929, § 72-226; R.S.1943, § 72-249; Laws 1963, c. 418, § 1, p. 1342; Laws 1973, LB 563, § 9; Laws 1996, LB 1044, § 787; Laws 2007, LB296, § 696.

**Cross References**

**Purpose of section,** see section 83-901.

**72-250 Permanent school fund; sale of public lands; credit to state.**

All money that may be received from the United States on account of the five percent fund on cash sale shall be placed to the credit of the permanent school fund of the state.

**Source:** Laws 1899, c. 69, § 30, p. 313; R.S.1913, § 5872; C.S.1922, § 5207; C.S.1929, § 72-227; R.S.1943, § 72-250.

**72-251 Permanent school fund; collections on judgments; payable to fund.**

All money arising from collections on judgments in favor of the state, shall be transferred and paid into the permanent school fund and become a part thereof.

**Source:** Laws 1899, c. 69, § 36, p. 315; R.S.1913, § 5873; C.S.1922, § 5208; C.S.1929, § 72-228; R.S.1943, § 72-251.

**72-252 Repealed. Laws 1969, c. 584, § 134.**

**72-253 School lands; exchange for federal or other lands; board; powers and duties.**

(1) The Board of Educational Lands and Funds is authorized and empowered to enter into agreements with the officers and agents of the United States Government for the exchange of any state educational lands lying within any federal forest or game reserve within this state for other lands of equal areas and value belonging to the United States. The board is authorized to convey any such lands to the United States by deed as provided in section 72-208, upon the execution by the United States Government of a patent to the State of Nebraska for the United States lands so exchanged.

(2) The Board of Educational Lands and Funds is authorized, upon the written approval of the Governor, to enter into agreements with individuals for the exchange of any state educational lands for other lands of equal areas or

value. Before such an exchange shall be made, it shall be shown that the Board of Educational Lands and Funds will likely be benefited by the exchange.

**Source:** Laws 1917, c. 212, § 1, p. 519; C.S.1922, § 5211; C.S.1929, § 72-231; Laws 1931, c. 120, § 1, p. 350; C.S.Supp.,1941, § 72-231; R.S.1943, § 72-253; Laws 1976, LB 626, § 1; Laws 1999, LB 779, § 42.

State recognizes that it cannot expect United States to bear burden created by outstanding leaseholds. State of Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947).

**72-254 School and federal lands; exchange; lease; renewal; removal of improvements.**

Any lands so received and patented from the United States shall be held as a part of the educational lands of this state, and shall be subject to all existing laws pertaining to such lands; *Provided*, that such lands, so received in exchange, shall only be subject to lease for terms not exceeding twelve years, with the privilege of renewing for a like term in the option of the board. Such leases may also include the right to the lessee of removing all improvements he may have erected on the land.

**Source:** Laws 1917, c. 212, § 2, p. 519; C.S.1922, § 5212; Laws 1925, c. 134, § 1, p. 353; C.S.1929, § 72-232; R.S.1943, § 72-254; Laws 1963, c. 418, § 2, p. 1343.

Right of lessee to remove all improvements he may have erected is recognized. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

**72-255 School and federal lands; exchange; lessee's interest; release; condemnation; procedure.**

The Board of Educational Lands and Funds is further authorized to secure from the holders of any leases of any educational lands lying in any federal forest reserve, surrenders, relinquishments, or cancellation of such leases. If the board and the holder of any such leases cannot agree upon the terms for such surrender, relinquishment, or cancellation, the board may take over the interest of such holder by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** Laws 1917, c. 212, § 3, p. 520; C.S.1922, § 5213; C.S.1929, § 72-233; R.S.1943, § 72-255; Laws 1951, c. 101, § 111, p. 499; Laws 1999, LB 779, § 43.

State may condemn leasehold for forest reserve. State of Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947).

**72-256 School and federal lands; exchange; minimum appraised value.**

The appraised value of any state lands exchanged under sections 72-253 to 72-255 shall not be less than seven dollars per acre, and the appraised value of the United States land received therefor shall correspond to this requirement.

**Source:** Laws 1917, c. 212, § 4, p. 520; C.S.1922, § 5214; C.S.1929, § 72-234; R.S.1943, § 72-256.

**72-257 School lands; expiration of lease; sale; mineral rights; appraisal; limitation on price; contiguous tracts; how treated.**

All lands, now owned or hereafter acquired by the state for educational purposes, may be sold at the expiration of the present leases. The Board of Educational Lands and Funds shall retain all mineral rights in the land sold. Prior to such sale, the land may be appraised for purposes of sale in the same manner as privately owned land by a certified general real property appraiser appointed by the board and thereafter shall be sold at public sale at not less than the appraised value. When two or more contiguous tracts are under separate leases with different expiration dates, the board may, if it is deemed to be in the best interest of the state, defer the sale of any tract having an earlier lease expiration date and may offer the tract for lease for less than twelve years to coincide with the expiring lease of the contiguous tract, in order that the contiguous lands may eventually be offered for sale on the same date.

**Source:** Laws 1921, c. 81, § 1, p. 294; C.S.1922, § 5215; C.S.1929, § 72-235; Laws 1935, c. 163, § 17, p. 609; C.S.Supp.,1941, § 72-235; Laws 1943, c. 161, § 1, p. 575; R.S.1943, § 72-257; Laws 1949, c. 214, § 2, p. 611; Laws 1951, c. 239, § 1, p. 846; Laws 1961, c. 352, § 1, p. 1112; Laws 1963, c. 419, § 1, p. 1345; Laws 1965, c. 435, § 2, p. 1386; Laws 1967, c. 466, § 10, p. 1450; Laws 1973, LB 145, § 1; Laws 2000, LB 1010, § 3; Laws 2006, LB 778, § 7.

Section held constitutional. State ex rel. Belker v. Board of Educational Lands & Funds, 184 Neb. 621, 171 N.W.2d 156 (1969).

In the event of sale of school land to third person, tenant has a right to compensation for improvements. Banks v. State, 181 Neb. 106, 147 N.W.2d 132 (1966).

#### **72-257.01 School lands; priorities for sale; request to sell.**

The Board of Educational Lands and Funds shall review and set priorities for the sale of lands covered by leases expiring each year, giving the highest priority to those lands which it determines, considering all relevant factors, can be sold to the best advantage. Any leaseholder or other interested party may request that the land covered by any expiring lease be offered for sale, and the board shall give consideration to such request in deciding whether to offer such land for sale.

**Source:** Laws 1973, LB 145, § 2.

#### **72-258 School lands; sale; notice; terms; partition; settlement; forfeiture of deposit; when.**

Educational land shall be offered for sale at public auction by a representative of the Board of Educational Lands and Funds and sold at not less than the appraised value to the highest bidder. Notice of such sale and the time and place where the same will be held shall be given by publication three consecutive weeks in some legal newspaper published in the county where the tracts of land or the lots are located or, in case no legal newspaper is published in the county, then in some legal newspaper of general circulation therein. The proof of such publication shall be made by the affidavit of the publisher or principal clerk of such newspaper or by some other person knowing about the same and shall be filed in the office of the board. When the land consists of an undivided interest in realty, an action to partition may be maintained in the same manner as provided by law for the partition of real property among several joint owners. All notices of sale shall be posted in the office of the board. The board may arrange for such commercial advertising of land sales as it deems in the best interest of the state.



Any person or entity requesting that a tract of land be sold at public auction shall file an agreement with the board to pay the appraised value or a higher value as a minimum opening bid for the land. Within sixty days after receipt by the board of the request, the board shall determine whether or not to offer the tract of land for sale at public auction with a minimum opening bid equal to that amount stated in the accepted agreement for the minimum opening bid and shall notify the person or entity requesting the auction of the board's determination prior to advertising the tract of land for sale. If the board determines to offer the tract of land for sale at public auction, the auction shall be held within one hundred twenty days after the board accepts the agreement for a minimum opening bid. If the board determines not to offer the tract of land for sale, the offering price and legal description of the tract of land shall be included in the annual report to the Legislature.

The sale shall be subject to confirmation by the board that the requirements of this section have been met. Settlement shall be made by paying cash of not less than twenty percent of the purchase price at the time of sale, and the balance shall be payable in cash within ninety days after the date of sale. If the person submitting the high bid for the land fails to pay the balance of the purchase price and complete the sale within ninety days, his or her rights under the sale, including the twenty percent downpayment, shall be forfeited by the board and a new sale shall be authorized.

**Source:** Laws 1921, c. 81, § 2, p. 295; C.S.1922, § 5216; C.S.1929, § 72-236; Laws 1935, c. 163, § 18, p. 610; C.S.Supp.,1941, § 72-236; Laws 1943, c. 161, § 2, p. 576; R.S.1943, § 72-258; Laws 1965, c. 435, § 3, p. 1386; Laws 1967, c. 467, § 16, p. 1456; Laws 1967, c. 466, § 11, p. 1450; Laws 1969, c. 589, § 3, p. 2440; Laws 1971, LB 23, § 2; Laws 1996, LB 1205, § 3; Laws 2000, LB 1010, § 4.

New sale can only be held by the board in the event that the highest bidder fails to pay the balance of the purchase in ninety days. *Bessey v. Board of Educational Lands & Funds*, 185 Neb. 801, 178 N.W.2d 794 (1970).

Under former law, all of section constitutional except provisions relating to sale by county treasurer. *State ex rel. Belker v.*

*Board of Educational Lands & Funds*, 184 Neb. 621, 171 N.W.2d 156 (1969).

Sale of school land leases made no reference to improvements. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

### **72-258.01 School lands; unsold; lease; duration.**

If such land should not be sold according to the provisions of sections 72-208, 72-257, 72-257.01, and 72-258, then it shall be offered for lease as the Board of Educational Lands and Funds shall provide for a period of not less than three years nor more than eight years as the board, in its discretion, shall determine. No such leased land shall be subsequently offered for sale until the expiration of such lease.

**Source:** Laws 1965, c. 435, § 4, p. 1387; Laws 1973, LB 145, § 3.

Section held constitutional. *State ex rel. Belker v. Board of Educational Lands & Funds*, 184 Neb. 621, 171 N.W.2d 156 (1969).

Where school land is not sold, it can be offered for lease for a six-year period. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

### **72-258.02 National System of Interstate and Defense Highways; construction on school lands; sale; procedure.**

Whenever a portion of the National System of Interstate and Defense Highways is constructed on school land and an interchange is constructed on such school land, the Board of Educational Lands and Funds shall offer such land

for sale at public auction in such tracts as the board shall determine and sell it at not less than its appraised value. The sale shall be made subject to the rights of leaseholders, if any, and the leaseholder shall be paid for improvements and the value of the leasehold for agricultural purposes. The sale shall be made in accordance with the provisions of section 72-258.

**Source:** Laws 1969, c. 586, § 1, p. 2435; Laws 2000, LB 1010, § 5.

**72-258.03 School lands; sale; appraised value.**

For purposes of sales of educational lands at public auction, appraised value is the value as determined by the Board of Educational Lands and Funds.

**Source:** Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2; Laws 2009, LB166, § 3; Laws 2011, LB210, § 3; Laws 2012, LB800, § 1.

**72-259 School lands; sale; proceeds; disposition.**

(1) The Board of Educational Lands and Funds shall deposit the proceeds of the sales of educational lands with the State Treasurer for the benefit of the various funds as provided in this section.

(2) The proceeds of the sales of common school and saline educational lands shall be deposited with the State Treasurer for the benefit of the permanent school fund of the state.

(3) The proceeds of the sales of university educational trust lands shall be deposited with the State Treasurer for the benefit of the Permanent Endowment Fund referred to in section 85-123.

(4) The proceeds of the sales of state college educational trust lands shall be deposited with the State Treasurer for the benefit of the endowment fund referred to in section 85-317.

**Source:** Laws 1921, c. 81, § 3, p. 295; C.S.1922, § 5217; C.S.1929, § 72-237; R.S.1943, § 72-259; Laws 1996, LB 1205, § 4.

**Cross References**

**Permanent school fund**, see Article VII, sections 5 and 9, Constitution of Nebraska.

**72-259.01 School lands; adjacent to city of the first or second class; plat; request for annexation; filing.**

When any educational lands abutting on and adjacent to any city of the first or second class that are needed for the expansion of such city have been subdivided into lots for the purpose of sale, as provided by section 72-257, the Board of Educational Lands and Funds may cause a plat of such subdivision to be filed in the office of the clerk of the city together with a resolution of the board requesting annexation of the tract to the city.

**Source:** Laws 1953, c. 259, § 1, p. 868.

**72-259.02 School lands; adjacent to city of the first or second class; plat; contents; certification.**

Such plat shall accurately describe all subdivisions of such tract or parcel of land, numbering the same by progressive numbers and giving the dimensions in length and breadth thereof, and the breadth and courses of all streets and alleys established therein, and shall be certified to by the State Surveyor.

**Source:** Laws 1953, c. 259, § 2, p. 868.

**72-259.03 School lands; adjacent to city of the first or second class; annexation; vote.**

The city council shall, at the next regular meeting thereof after the filing of such plat, as required by section 72-259.01, and request for annexation, vote upon the question of such annexation. The vote thereon shall be spread upon the records of such city.

**Source:** Laws 1953, c. 259, § 3, p. 868.

**72-259.04 School lands; adjacent to city of the first or second class; annexation; ordinance; contents.**

If a majority of all members of the council vote for such annexation, an ordinance shall be prepared and passed by the council declaring the annexation of such territory to the corporate limits of the city and extending the limits thereof accordingly. Such ordinance shall designate the name of the addition and the names of the streets therein.

**Source:** Laws 1953, c. 259, § 4, p. 869.

**72-259.05 School lands; adjacent to city of the first or second class; annexation; filings required.**

There shall be filed forthwith, in the office of the register of deeds of the proper county, (1) a plat of such territory certified by the State Surveyor, (2) a certified copy of the resolution of the Board of Educational Lands and Funds approving the same and requesting the annexation, and (3) a copy of the ordinance declaring such annexation, certified under the seal of the city. Thereupon, such annexation of such adjacent territory shall be deemed complete, and the territory included and described in the plat shall be deemed and held to be a part of the city.

**Source:** Laws 1953, c. 259, § 5, p. 869.

**72-259.06 School lands; adjacent to city of the first or second class; dedication of streets and alleys.**

The filing of such plat and proceedings in the office of the register of deeds shall constitute a dedication of the streets and alleys contained therein so long as the same shall be used for such public purposes.

**Source:** Laws 1953, c. 259, § 6, p. 869.

**72-259.07 School lands; adjacent to city of the first or second class; sale; taxes; when.**

The lands included in the territory so annexed shall not be subject to any taxes or special assessments so long as the same remain the property of the state, but upon sale and delivery of a deed by the state to the purchaser the lands so conveyed shall forthwith be placed upon the tax list and shall be included in the next annual assessment.

**Source:** Laws 1953, c. 259, § 7, p. 869.

**72-259.08 School lands; subdivide; plat; filing; dedication of streets and alleys.**

Whenever the Board of Educational Lands and Funds determines, considering all relevant factors, that it would be in the best interests of the educational trust to do so, it may subdivide and plat any tract prior to offering it for sale. Such plats shall be prepared as prescribed in section 72-259.02 and shall be filed in the office of the register of deeds and such filing shall constitute a dedication of the streets and alleys shown therein so long as the same are used for such purposes.

**Source:** Laws 1973, LB 145, § 4.

**72-260 Repealed. Laws 1967, c. 466, § 12.**

**72-261 School lands; acquisition by Game and Parks Commission; procedure; approval by Governor.**

The Game and Parks Commission is authorized to acquire title by condemnation to not more than one section or six hundred forty acres of educational lands in any calendar year for parks, recreation areas, or wildlife management areas, or any combination of these uses. The commission shall employ the procedure set forth in sections 72-213 to 72-224 to acquire such title, except that the determination of the value of the lands to be acquired shall be in the manner provided by section 72-224.03 and the value of any leasehold interests to be acquired shall be determined as provided by section 72-224.02. The Governor shall approve all such acquisitions as provided in section 37-303.

**Source:** Laws 1935, c. 81, § 1, p. 270; C.S.Supp.,1941, § 72-243; R.S. 1943, § 72-261; Laws 1963, c. 420, § 1, p. 1346; Laws 1965, c. 433, § 3, p. 1382; Laws 1998, LB 922, § 407.

**72-262 Resurvey of school lands; Grant and Hooker Counties; acceptance.**

The State of Nebraska hereby adopts the Dixon and Alt survey of the school lands included in the survey made in accordance with the special Act of Congress entitled, An act providing for the resurvey of Grant and Hooker Counties in the State of Nebraska, approved August 9, 1894, as the true and correct survey of the school lands belonging to the State of Nebraska included in that survey, and hereby adopts the lines, corners and monuments made under the above special Act of Congress for Grant and Hooker Counties, Nebraska, as the true, correct and legal boundary lines of the school lands included in that survey.

**Source:** Laws 1915, c. 230, § 1, p. 534; C.S.1922, § 5210; C.S.1929, § 72-230; R.S.1943, § 72-262.

**72-263 Resurvey of school lands; Morrill County; acceptance.**

The resurvey made by the United States Government of school sections sixteen and thirty-six, in townships twenty-one, twenty-two and twenty-three north, of range forty-seven, west of the sixth principal meridian, in Morrill County, Nebraska, and known as tracts numbers sixty-three and sixty-four in township twenty-one; tracts numbers sixty-five and sixty-six in township twenty-two, and tracts numbers seventy-eight and seventy-nine in township twenty-three, which surveys have been approved by the Commissioner of the General

Land Office, are accepted and adopted as the true and correct lines, corners, monuments and boundaries of such school sections.

**Source:** Laws 1929, c. 184, § 1, p. 647; C.S.1929, § 72-240; R.S.1943, § 72-263.

**72-264 Repealed. Laws 1957, c. 304, § 1.**

**72-265 Repealed. Laws 1957, c. 304, § 1.**

**72-266 Board of Educational Lands and Funds; authority to sell personal property.**

The state Board of Educational Lands and Funds may sell, at either public or private sale, and convert into money, articles of personal property acquired by the common school fund through bequest, gift, escheat or forfeiture to the State of Nebraska.

**Source:** Laws 1943, c. 155, § 1, p. 565; R.S.1943, § 72-266.

**72-267 School lands; Cherry County; designation; subdivision; improvements; sale.**

The northeast quarter of the southeast quarter of section 31, township 34, north, range 27, west of the sixth principal meridian; section 32 and lots 1 and 2, and the west half of the southeast quarter of section 33, and the west half of section 33, township 34, north, range 27, west of the sixth principal meridian; all in Cherry County, Nebraska, title to which is vested in the State of Nebraska, shall be leased by the Board of Educational Lands and Funds in the same manner as is provided for the leasing of the common school lands of the state; *Provided*, that the northeast quarter of the southeast quarter of section 31, township 34, north, range 27, west of the sixth principal meridian, Cherry County, Nebraska, together with all improvements thereon, may be sold by the board at public auction, as provided by section 72-258, and may be subdivided for the purpose of sale in such manner as the board may determine.

**Source:** Laws 1953, c. 257, § 1, p. 866.

**72-268 School lands; Cherry County; funds; deposit; transfer.**

The Board of Educational Lands and Funds shall place all money received for rental of the land, described in section 72-267, in the temporary school fund and all money received from the sale of the land, authorized to be sold by section 72-267, in the permanent school fund. All money now in the hands of the State Treasurer, received heretofore for the rental of such lands, shall be transferred to the temporary school fund.

**Source:** Laws 1953, c. 257, § 2, p. 866.

**72-269 School lands; Dawes County; transfer to Game and Parks Commission.**

The Board of Educational Lands and Funds is authorized and directed to sell section thirty-six, township thirty-two north, range forty-nine, west of the sixth principal meridian, Dawes County, Nebraska, reserving mineral, oil, and gas rights, to the Game and Parks Commission on payment of forty thousand dollars. All mineral extraction and exploration on such land shall be conducted

in a manner approved by both the Board of Educational Lands and Funds and the Game and Parks Commission.

**Source:** Laws 1967, c. 463, § 1, p. 1434.

**72-270 Production of wind or solar energy; agreements; sections applicable.**

Agreements involving the production of wind or solar energy on lands under the control of the Board of Educational Lands and Funds shall be regulated by sections 72-270 to 72-274.

**Source:** Laws 2010, LB235, § 1; Laws 2012, LB828, § 11.

**72-271 Production of wind or solar energy; agreements; terms, defined.**

For purposes of sections 72-270 to 72-274:

(1) Agreement means (a) for purposes of a solar energy system, a solar agreement as defined in section 66-909 and (b) for purposes of a wind energy conversion system, a wind agreement as defined in section 66-909.04;

(2) Board means the Board of Educational Lands and Funds;

(3) Lessee means any individual, corporation, or other entity that enters into an agreement with the board;

(4) Solar energy means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy; and

(5) Wind energy has the definition found in section 66-909.01.

**Source:** Laws 2010, LB235, § 2; Laws 2012, LB828, § 12.

**72-272 Production of wind energy or solar energy; agreements; board; powers.**

The board may authorize agreements for the use of any school or public lands belonging to the state and under its control for exploration and development of wind energy or solar energy for such durations and under such terms and conditions as the board shall deem appropriate, except that such agreements shall comply with sections 66-901 to 66-914. In making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such agreements.

**Source:** Laws 2010, LB235, § 3; Laws 2012, LB828, § 13.

**72-273 Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.**

(1) If an agreement relating to wind energy or solar energy is authorized by the board on land already being leased for agricultural or other purposes by a prior lessee, the existing rights of the prior lessee shall not be impaired, and the board shall reduce the rental amount due from such prior lessee in proportion to the amount of land that is removed from use as a result of the agreement.

(2) A lessee for agricultural or other purposes shall be compensated for all damages to personal property owned by such lessee or to growing crops, including grass, caused by operations under a concurrent agreement regarding such land for wind energy or solar energy purposes, and the board shall require the lessee under the agreement to provide such insurance and indemnity

agreements which the board determines are necessary for the protection of the state and its lessees.

(3) If an agreement relating to wind energy or solar energy is authorized by the board on land concurrently being leased for agricultural purposes, the lessee for agricultural purposes shall have priority as to the use of the water on the land, but lessees for other purposes, including parties to agreements relating to wind energy or solar energy, shall be allowed reasonable use of the water on the land.

**Source:** Laws 2010, LB235, § 4; Laws 2012, LB828, § 14.

#### **72-274 Wind energy or solar energy agreement; rules and regulations.**

The board may adopt and promulgate such rules and regulations as it shall deem necessary and proper to regulate the agreements relating to wind energy or solar energy exploration and development on school and public lands pursuant to sections 72-270 to 72-274 and to prescribe such terms and conditions, including bonds, as it shall deem necessary in order to protect the interests of the state and its lessees.

**Source:** Laws 2010, LB235, § 5; Laws 2012, LB828, § 15.

### **ARTICLE 3**

#### **DEVELOPMENT OF MINERAL LANDS**

##### **Cross References**

**Coal and iron**, state and county aid to development, see Chapter 57, article 1.  
**Conservation and Survey Division of the University of Nebraska**, duties of, see section 85-163.  
**Federal Mineral Leasing Act funds**, see section 79-1062.  
**Geothermal resources**, authority to lease, see section 66-1104.

##### **Section**

- 72-301. State lands, lakes, and rivers; mineral rights; reserved to state; exception.
- 72-302. Mineral rights; who may acquire.
- 72-303. Mineral rights; lease; limitations; term.
- 72-304. Mineral rights; development operations; reports; when.
- 72-305. Mineral rights; lease; forfeiture; grounds.
- 72-306. Minerals; discovery; report required; delay in development; powers of board.
- 72-307. Mineral rights; lease; renewal; when authorized; terms.
- 72-308. Mineral rights; lease; terms; rights and duties of lessee.
- 72-309. Mineral rights; lease; bids; award; how made.
- 72-310. Mineral rights; lease; entry by state; when authorized.
- 72-311. Mineral rights; lease; assignment; unauthorized transfers.
- 72-312. Alkali, potash, or saline lakes partly on state land; joint operation; failure to agree; effect.
- 72-313. Violations; penalty.
- 72-314. Rules; power of Board of Educational Lands and Funds.

#### **72-301 State lands, lakes, and rivers; mineral rights; reserved to state; exception.**

All common school, university, normal, saline or other public lands, lakes, lake beds, river beds and channels, belonging to the state or under its control, and all lands which may hereafter be so owned, and all of such lands which have heretofore been sold or conveyed by the state or by its authority, in the conveyance of which there has been reserved mineral or other valuable substances therein, are reserved to the state, as well as lands that may hereafter be sold, and lands hereafter acquired by the state and, except as to oil and gas

which are controlled by the provisions of sections 72-901 to 72-911, shall be included within the provisions of sections 72-301 to 72-314, and shall be open to the prospecting for and development of minerals, potash and other valuable substances upon conditions provided in sections 72-301 to 72-314.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 1, p. 43; C.S.1922, § 5219; C.S.1929, § 72-301; Laws 1943, c. 164, § 13, p. 583; R.S.1943, § 72-301.

Reservation of oil rights did not apply to contracts of sale entered into prior to enactment of this act. Pfeifer v. Ableiding-er, 166 Neb. 464, 89 N.W.2d 568 (1958). and the fourteenth amendment to the federal Constitution. Briggs v. Neville, 103 Neb. 1, 170 N.W. 188 (1918).

This article is constitutional as against contentions that it violates sections 11, 13, and 15 of Article III of the Constitution

### **72-302 Mineral rights; who may acquire.**

Any person or association of persons, corporate or otherwise, desiring to obtain the right to prospect for and develop the minerals or valuable substances upon or in any of the public lands or waters of the state, except oil and gas, may do so under the provisions of sections 72-301 to 72-314. It shall be unlawful to prospect upon or in any of such public lands or waters without a lease or for anyone to interfere with the functions and duties of the state surveys having in charge the investigations of the natural resources of the state. The Conservation and Survey Division of the University of Nebraska at the request of the Board of Educational Lands and Funds shall make investigations and reports concerning state lands.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 2, p. 43; C.S.1922, § 5220; C.S.1929, § 72-302; Laws 1943, c. 164, § 14, p. 584; R.S.1943, § 72-302; Laws 1969, c. 592, § 1, p. 2444; Laws 1974, LB 811, § 17; Laws 1999, LB 779, § 44.

### **72-303 Mineral rights; lease; limitations; term.**

Any qualified person or association desiring a prospector's right shall make application, giving the designation of the land by legal description, to the Board of Educational Lands and Funds, with the proper fees, and the board shall issue a lease therefor. If the applicant is an individual, the application shall include the applicant's social security number. The board may exercise discretionary power, and be guided by best public policy in granting leases, and may adopt rules, regulations, or resolutions necessary to expedite production, and to best preserve the interests and integrity of the state, and to prevent control by monopolies and alien enemies. No person shall be permitted to enter for such mineral purposes more than one section of land, and no development company or association shall be permitted to acquire in the aggregate more than ten thousand acres of state land by assignment or otherwise. Leases shall be for a term of not to exceed three years, subject to renewal as provided in section 72-307.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 3, p. 44; C.S.1922, § 5221; C.S.1929, § 72-303; R.S.1943, § 72-303; Laws 1997, LB 752, § 200; Laws 1999, LB 779, § 45.

### **72-304 Mineral rights; development operations; reports; when.**

The owner of the lease shall be required, in the case of potash, salines, silica, volcanic ash, sand, gravel, clay, fuller's earth, and tripoli, to report within thirty



days after the issuance of such lease, and to begin construction of necessary works or the installation of necessary machinery, for the physical development of the area, within ninety days after the issuance of a lease. In the case of minerals, substances not above enumerated, and coal, the lessee shall report within six months after issuance of the lease, and begin development operations within one year from the date of the lease. The lessee shall make reports to the Board of Educational Lands and Funds showing the progress of the work on or before December 1 of each year.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 4, p. 44; C.S.1922, § 5222; C.S.1929, § 72-304; Laws 1943, c. 164, § 15, p. 584; R.S.1943, § 72-304; Laws 1999, LB 779, § 46.

**72-305 Mineral rights; lease; forfeiture; grounds.**

Failure to progress with due diligence, or failure to make reports regularly as provided, or special reports when requested, or the filing of a statement which is untrue as to material facts, will subject the lease to forfeiture, and the termination of the rights of the lessee upon an order of the Board of Educational Lands and Funds.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 5, p. 45; C.S.1922, § 5223; C.S.1929, § 72-305; R.S.1943, § 72-305; Laws 1999, LB 779, § 47.

**72-306 Minerals; discovery; report required; delay in development; powers of board.**

Upon the discovery of potash or other minerals or substances in commercial quantities, the lessee shall report the same to the Board of Educational Lands and Funds within thirty days, together with a statement showing how soon facilities necessary for production and marketing may be completed. If the board deems there is an unnecessary delay between the time of discovery and the time of production, a showing may be required as to the cause of the delay and, if it be found to be out of proportion to a reasonable length of time, the board may demand more rapid development or the surrender or cancellation of the lease.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 6, p. 45; C.S.1922, § 5224; C.S.1929, § 72-306; Laws 1943, c. 164, § 16, p. 584; R.S.1943, § 72-306.

**72-307 Mineral rights; lease; renewal; when authorized; terms.**

The lessee may have a right to the renewal of the lease upon the same terms as provided in section 72-303, so long as such minerals or other valuable substances are produced in paying quantities; *Provided*, such leases shall in no instance contain any provision abridging the rights of future legislatures to make such laws as may in their judgment be necessary to conserve the interests of the state. If the lessee shall have made extensive tests, or a showing satisfactory to the Board of Educational Lands and Funds that he has proceeded in good faith, even though no successful production has resulted, the board may, upon such showing, grant an extension or renewal for further prospecting.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 7, p. 45; C.S.1922, § 5225; C.S.1929, § 72-307; R.S.1943, § 72-307.

That no provision is made in this section for ascertaining the amount of damages to growing crops does not injure the agricultural lessee's right to compensation for any such damage. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

### **72-308 Mineral rights; lease; terms; rights and duties of lessee.**

A mineral prospector's lease shall be issued to the highest and best bidder. The lease issued shall provide that the royalty shall be not less than five percent, in addition to the rent to be determined by the Board of Educational Lands and Funds after examination and report by the Conservation and Survey Division of the University of Nebraska and before leasing. Such minerals or substances shall be set apart in pipelines, tanks, or other receptacles, suitable for receiving the same, to the credit and benefit of the state or, at the option of the state and by the approval of the board, the lessee shall pay the board each thirty days the gross market value thereof in cash. The state shall reserve the right to fully use and enjoy, for tillage or other agricultural use, the area leased for minerals, except such parts thereof as may be necessary for mining and development purposes, and a right-of-way over and across the premises to the place of mining or operating, and for pipelines. The lessee shall pay for all damages to growing crops, caused by such operations, and for the use of the land necessarily occupied. The lessee shall have the privilege of using sufficient water from the premises leased to run necessary boilers and engines incident to and used in the operations of the drills, mines, or development of products covered by the lease, and the right to remove the machinery, fixtures, and buildings placed on the premises by the lessee or those acting under the lessee. The state, or its authorized agent, may pay for and retain any structures or improvements sought to be removed by the lessee upon the abandonment, expiration, or cancellation of the lease.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 8, p. 45; C.S.1922, § 5226; C.S.1929, § 72-308; Laws 1943, c. 164, § 17, p. 585; R.S.1943, § 72-308; Laws 1969, c. 592, § 2, p. 2444; Laws 1999, LB 779, § 48.

### **72-309 Mineral rights; lease; bids; award; how made.**

Where two or more applications are received for the same land, the rights thereon may be awarded to the legally qualified applicant making the highest and best bid, to be determined by taking into consideration both the bonus and royalty, the award being made after proper legal notice in such manner as the Board of Educational Lands and Funds shall determine best calculated to protect public interests.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 9, p. 46; C.S.1922, § 5227; C.S.1929, § 72-309; R.S.1943, § 72-309.

It is the duty of the board in considering bids for leases to investigate as to the relative advantages that would accrue to the state under the respective offers. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

### **72-310 Mineral rights; lease; entry by state; when authorized.**

The right of the state, or its authorized agents, to enter upon its own lands, and to remove therefrom any substances necessary for road construction, or in structures of public buildings, or other public or general purposes, shall not be denied or abridged by any lease granted hereunder.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 10, p. 46; C.S.1922, § 5228; C.S.1929, § 72-310; R.S.1943, § 72-310.

**72-311 Mineral rights; lease; assignment; unauthorized transfers.**

No assignment shall be valid unless it has the approval of the Board of Educational Lands and Funds and has been recorded in the office of the board, and, if the grantee is otherwise legally disqualified, approval by the board, or recording, will not make such assignment valid. Any association, corporate or otherwise, operating on state lands, transferring its interests or capital stock, or more than ten percent thereof, to any association or corporation which is legally disqualified for holding, or which has its full quota of state leases, will render the leases it holds void upon an order of the state board or act of the Legislature. The purpose of sections 72-301 to 72-314 is to prevent for all times, directly and indirectly, the monopolization of natural resources of the State of Nebraska.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 11, p. 47; C.S.1922, § 5229; C.S.1929, § 72-311; R.S.1943, § 72-311.

**72-312 Alkali, potash, or saline lakes partly on state land; joint operation; failure to agree; effect.**

Alkali, potash, or saline lakes, ponds, or marshes, located partly upon state lands and partly upon private lands, shall be measured, tested, and analyzed by the Conservation and Survey Division of the University of Nebraska which shall report to the Board of Educational Lands and Funds, and the proportion of the area and content belonging to each owner shall be determined from such report. If the state lessees and private owners or lessees are unable to agree for joint operation of such area, no alkali, potash, or salines in solution shall be removed from such ponds, lakes, or marshes until after thirty days' notice by certified or registered mail to all parties concerned. Any or all parties may then operate by rendering monthly an accounting to the board and by paying to the county treasurer in the county in which the land is located, for the state educational funds, the royalty due the state, as determined by the board. The state shall, at all times, be permitted to examine the books and methods of bookkeeping with relation to the accounts in which the state is interested and to furnish, if deemed necessary by the board, assistants to make analyses or for checking the quality and quantity of minerals or substances removed.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 12, p. 47; C.S.1922, § 5230; C.S.1929, § 72-312; R.S.1943, § 72-312; Laws 1969, c. 592, § 3, p. 2445; Laws 1987, LB 93, § 18.

**72-313 Violations; penalty.**

Any person operating pumps, or providing channels, or altering natural conditions in any way, by which the waters and valuable substances upon or in public lands and waters of the state are taken, drained or removed, without first securing approval of the Board of Educational Lands and Funds, shall be deemed guilty of a Class II misdemeanor and subject to an additional fine equal to the value of the product taken.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 14, p. 48; C.S.1922, § 5232; C.S.1929, § 72-313; R.S.1943, § 72-313; Laws 1977, LB 39, § 179.

**72-314 Rules; power of Board of Educational Lands and Funds.**

Rules may be adopted by the Board of Educational Lands and Funds found necessary for carrying out the purposes and provisions of sections 72-301 to 72-314, and such rules, where not in conflict with said sections, shall have the same force and effect.

**Source:** Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 15, p. 48; C.S.1922, § 5233; C.S.1929, § 72-314; R.S.1943, § 72-314.

**ARTICLE 4**

**PRESERVATION OF FORT PROPERTY**

Section

- 72-401. Repealed. Laws 1959, c. 436, § 16.
- 72-402. Repealed. Laws 1959, c. 436, § 16.
- 72-403. Repealed. Laws 1959, c. 436, § 16.
- 72-404. Repealed. Laws 1959, c. 436, § 16.
- 72-405. Repealed. Laws 1959, c. 436, § 16.
- 72-406. Repealed. Laws 1959, c. 436, § 16.
- 72-407. Federal forts; preservation, restoration and development board; membership.
- 72-408. Preservation, restoration and development board; trustees; term; qualifications.
- 72-409. Board; minute book; vacancies; how filled.
- 72-410. Board; office; records; organization; officers; meetings.
- 72-411. Board; trustees; oath.
- 72-412. Boards; powers and duties.
- 72-413. Forts; federal aid; acceptance.
- 72-414. Board; employees; compensation.
- 72-415. Board; secretary; duties.
- 72-416. Board; treasurer; bond.
- 72-417. Board; records; audits.
- 72-418. Board; legal counsel.
- 72-419. Board; expenses; payment.
- 72-420. Board; bond; fund; created; disbursements; how made.
- 72-421. Repealed. Laws 1991, LB 13, § 1.
- 72-422. Repealed. Laws 1991, LB 13, § 1.
- 72-423. Repealed. Laws 1982, LB 592, § 2.
- 72-424. Repealed. Laws 1982, LB 592, § 2.
- 72-425. Repealed. Laws 1982, LB 592, § 2.

**72-401 Repealed. Laws 1959, c. 436, § 16.**

**72-402 Repealed. Laws 1959, c. 436, § 16.**

**72-403 Repealed. Laws 1959, c. 436, § 16.**

**72-404 Repealed. Laws 1959, c. 436, § 16.**

**72-405 Repealed. Laws 1959, c. 436, § 16.**

**72-406 Repealed. Laws 1959, c. 436, § 16.**

**72-407 Federal forts; preservation, restoration and development board; membership.**

Upon filing, with the Governor, a petition signed by one hundred qualified electors of any county wherein is situated in whole or in part an abandoned federal fort suitable for preservation as a historical site for memorial and state park purposes, praying for the creation and establishment of Fort . . . . . Preservation, Restoration and Development Board, hereinafter called board, the Governor shall, within thirty days after receiving such petition, select two residents of the county wherein the fort site, or a major portion of the fort site,

is located, and one resident of an adjoining county, who shall act as trustees on the board. The Governor shall notify in writing forthwith the first trustees selected by him to serve on the board, by communication addressed through the mail to each of them. The Governor shall forward a copy of his letters of appointment to the county treasurer of the county in which the fort or a major portion of the fort site is located, who acts as treasurer ex officio of the board as provided in section 72-416.

**Source:** Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-407; Laws 1959, c. 331, § 1, p. 1204.

**72-408 Preservation, restoration and development board; trustees; term; qualifications.**

The term of office of the trustees on the board shall be for a period of three years, except the first trustees on the board, who shall be appointed by the Governor as follows: One trustee for one year, one trustee for two years, and one trustee for three years. Each of the trustees first or thereafter appointed shall be a person who is interested in the preservation, restoration and development of the fort property as a memorial to Nebraska pioneers, and as a reservation to preserve the ideals of Nebraska's early settlers as a state park, or other appropriate historical memorial site. When the respective terms of office of the first trustees appointed to the board shall expire, their successors shall be selected by the county board of the county wherein the fort site or a major portion of the fort site is located; and the trustees appointed to the board shall each hold office until his successor is appointed and qualified.

**Source:** Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-408.

**72-409 Board; minute book; vacancies; how filled.**

The board shall keep a minute book of its proceedings, which shall be open at all reasonable times to public inspection. Vacancies appearing on the board shall be filled by the county board in like manner as regular appointments to the board are made.

**Source:** Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-409.

**72-410 Board; office; records; organization; officers; meetings.**

The board shall maintain its office or principal place of business in the office of the county clerk of the county where its treasurer has his or her office and shall hold its meetings, which shall be open to the public, in the district courtroom of such county. The minute book of the board and all other papers, records, or correspondence shall be kept on file and preserved by its secretary in the office of the county clerk. The first board shall organize within ten days after the date of its written notice of appointment by the Governor. The county treasurer shall, upon receipt of his or her copy of the letters of appointment from the Governor, issue a call for the initial meeting of the trustees for a day and hour certain, shall call the meeting to order, shall act as temporary chairperson, shall examine and verify the credentials of the Governor's appointees to the board with his or her copy thereof, and shall deliver all documents of credentials to the secretary of the board when he or she is later chosen. The appointees shall select from their own number a chairperson and a secretary,

whose terms of office shall be for a period of one year. Each year thereafter the board shall hold its annual meeting and shall meet and organize for the ensuing year at the place designated in this section for holding its regular meetings on the day and hour prescribed by the bylaws. Notice of the time and place of holding the annual meeting of the board shall be given by the secretary by publication one time in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county not less than ten days before the day when the annual meeting is held. The chairperson and secretary shall hold office until their successors are selected and qualified.

**Source:** Laws 1941, c. 148, § 2, p. 584; C.S.Supp.,1941, § 72-412; R.S. 1943, § 72-410; Laws 1986, LB 960, § 38.

#### **72-411 Board; trustees; oath.**

All trustees comprising the board shall take an oath in writing in such form as the county attorney of the county shall provide and approve, faithfully to execute the duties and trusts committed to their care and management, and to dispose of the funds and income and corpus of such trusts in conformity with sections 72-407 to 72-420 and the wishes expressed in the instruments creating the trust estates.

**Source:** Laws 1941, c. 148, § 2, p. 584; C.S.Supp.,1941, § 72-412; R.S. 1943, § 72-411.

#### **72-412 Boards; powers and duties.**

The boards created and governed by sections 72-407 to 72-420 shall be bodies corporate and politic, and may sue and be sued, may contract or be contracted with; may acquire, hold, mortgage, and convey property, real or personal, directly or indirectly, for the purpose of acquiring abandoned federal fort sites and preserving, restoring, or developing the same in keeping with the intent and purpose of the sections above specified; may take private property for public use in acquiring such fort sites; may exercise the power of eminent domain so granted in the manner set forth in sections 76-704 to 76-724; may exercise all ancillary powers to carry into force and effect all powers granted in general terms; may adopt bylaws not inconsistent with the sections above specified to assist them in carrying out their functions and duties specifically granted herein; may receive and safeguard donations, gifts in cash or its equivalent, and donations in trust subservient to the uses stipulated by donors; may cooperate with and enter into contracts with the United States of America or any of its bureaus, divisions, or agencies, for the acquisition, restoration, development, and maintenance of abandoned fort sites, for the repair of existing buildings, and for the construction of buildings and other improvements thereon; may issue membership or foundation certificates, and receive the proceeds thereof under such terms and conditions as provided in the bylaws; and may issue revenue bonds for the purpose of effectuating the intent of the sections above specified in such method or manner as the bylaws shall provide.

**Source:** Laws 1941, c. 148, § 3, p. 585; C.S.Supp.,1941, § 72-413; R.S. 1943, § 72-412; Laws 1951, c. 101, § 112, p. 500.

#### **72-413 Forts; federal aid; acceptance.**

Full and complete acceptance and assent is made and given by the State of Nebraska to all and every one of the terms and conditions set forth in the Acts of Congress which offer aid to the state for the agencies of the state government, including boards created by section 72-407, by way of grants in aid of construction of public buildings for the preserving, restoring and developing of abandoned federal fort sites.

**Source:** Laws 1941, c. 148, § 4, p. 585; C.S.Supp.,1941, § 72-414; R.S. 1943, § 72-413.

**72-414 Board; employees; compensation.**

The board of trustees shall have power to pass bylaws for the regulation of its business and affairs, and in such bylaws shall provide for the appointment or employment of such agents, servants and employees, subject to the order of the board, as it may find necessary or expedient in the conduct of its affairs and business, and shall fix the compensation and term or terms of service of the agents, servants and employees so appointed.

**Source:** Laws 1941, c. 148, § 5, p. 585; C.S.Supp.,1941, § 72-415; R.S. 1943, § 72-414.

**72-415 Board; secretary; duties.**

The secretary of the board shall keep the minutes of the board and shall perform such other services as may be required by him of the board, and may receive such compensation as may be fixed by the board from time to time.

**Source:** Laws 1941, c. 148, § 6, p. 586; C.S.Supp.,1941, § 72-416; R.S. 1943, § 72-415.

**72-416 Board; treasurer; bond.**

The treasurer of the county in which the board has its principal place of business and operates, shall act as treasurer of the board ex officio, and he shall receive such compensation for such services as may be fixed from time to time by the board. He shall be liable on his official bond for the safekeeping of board funds, and his bond shall be increased or diminished from time to time as the condition, amount and safety of the funds of the board in his hands may require.

**Source:** Laws 1941, c. 148, § 7, p. 586; C.S.Supp.,1941, § 72-417; R.S. 1943, § 72-416.

**72-417 Board; records; audits.**

The board shall keep full and complete minutes of all transactions occurring at its meetings, such minutes to be kept in a well-bound book, which shall be open to the inspection of the public at all reasonable times, and the board shall also keep a well-bound book or books in which shall be recorded all instruments, documents, resolutions, bylaws, or other writings under which title to money or property is given, granted, taken, or held for the use of the board, and the same shall be a public record. The board shall also keep books of account that show all receipts and disbursements and the true condition of the funds and trusts committed to its charge. Such books of account shall be audited by the person conducting the audit pursuant to section 23-1608 and by the county clerk whenever, and as often as, an audit is made of all accounts of the county.

An audit of the board's books of account may be ordered by the county board at any time it deems that such an audit is advisable.

**Source:** Laws 1941, c. 148, § 8, p. 586; C.S.Supp.,1941, § 72-418; R.S. 1943, § 72-417; Laws 2000, LB 692, § 10.

**72-418 Board; legal counsel.**

The county attorney of the county in which the board operates shall act as legal advisor for the board without extra compensation; *Provided*, the board may employ from time to time for special pieces of legal work additional counsel, whenever it deems such employment necessary for the administration of its affairs and business.

**Source:** Laws 1941, c. 148, § 9, p. 586; C.S.Supp.,1941, § 72-419; R.S. 1943, § 72-418.

**72-419 Board; expenses; payment.**

The trustees composing the board shall serve without compensation but may appropriate and disburse sufficient of the funds in their control by filing a request for such trust funds, to be ordered, sworn to, and allowed by the trustees as other requests for payment from such county, to pay the expenses of administering their trusts.

**Source:** Laws 1941, c. 148, § 10, p. 587; C.S.Supp.,1941, § 72-420; R.S.1943, § 72-419; Laws 1988, LB 864, § 9.

**72-420 Board; bond; fund; created; disbursements; how made.**

The trustees composing the board shall each give a surety bond in the sum of one thousand dollars running to the county as obligee, conditioned upon the faithful performance of their duties and responsibilities as provided in sections 72-407 to 72-420 and under the bylaws adopted pursuant to such sections. The bond, when approved by the county attorney of the county as to form and substance, shall be filed and kept current in the office of the county clerk. All donations, gifts, or other money that comes into the hands of the board under the terms of such sections shall be forthwith delivered to the county treasurer who shall deposit, safeguard, and disburse the same from a fund of the county to be known as the Fort . . . . . Fund. The county treasurer shall make disbursements from such fund only upon receipt of a proper warrant or voucher signed by the chairperson and attested by the secretary of the board. The board shall issue no voucher for the payment of any money from such fund unless there is presented to it a request for payment or reimbursement duly verified by the oath of the requester and unless the request so verified is approved by the affirmative action of two-thirds of the members-elect of the board at a regular meeting.

**Source:** Laws 1941, c. 148, § 11, p. 587; C.S.Supp.,1941, § 72-421; R.S.1943, § 72-420; Laws 1988, LB 864, § 10.

**72-421 Repealed. Laws 1991, LB 13, § 1.**

**72-422 Repealed. Laws 1991, LB 13, § 1.**

**72-423 Repealed. Laws 1982, LB 592, § 2.**

**72-424 Repealed. Laws 1982, LB 592, § 2.**



**72-425 Repealed. Laws 1982, LB 592, § 2.**

**ARTICLE 5  
SALINE LANDS**

Section	
72-501.	Saline lands.
72-502.	Rental; accrues to temporary school fund.
72-502.01.	Rentals; previous use validated.
72-503.	Lease; default; forfeiture; effect.
72-504.	Lease; terms; appraisal; when.

**72-501 Saline lands.**

All the saline lands of which the title is vested in the state shall be leased by the Board of Educational Lands and Funds.

**Source:** Laws 1889, c. 94, § 1, p. 580; R.S.1913, § 5876; C.S.1922, § 5238; C.S.1929, § 72-501; R.S.1943, § 72-501.

**72-502 Rental; accrues to temporary school fund.**

The Board of Educational Lands and Funds shall place all money received for rental of saline lands in the temporary school fund of the state, subject to the law governing such temporary school fund.

**Source:** Laws 1889, c. 94, § 6, p. 582; Laws 1893, c. 22, § 2, p. 159; R.S.1913, § 5877; C.S.1922, § 5239; C.S.1929, § 72-502; Laws 1943, c. 156, § 1, p. 566; R.S.1943, § 72-502.

**72-502.01 Rentals; previous use validated.**

The use heretofore made by the Board of Educational Lands and Funds of rentals received from saline lands, by placing them in the temporary instead of the permanent school fund, is validated and approved.

**Source:** Laws 1943, c. 156, § 2, p. 566; R.S.1943, § 72-502.01.

**72-503 Lease; default; forfeiture; effect.**

If the lessee defaults in the payment of his interest or rental for more than one year, the Board of Educational Lands and Funds may cause notice to be given and a forfeiture declared as provided by law regulating the leasing of school lands, and when so forfeited the land shall be again offered for lease after having been advertised as provided by law.

**Source:** Laws 1889, c. 94, § 7, p. 582; R.S.1913, § 5878; C.S.1922, § 5240; C.S.1929, § 72-503; R.S.1943, § 72-503.

**72-504 Lease; terms; appraisal; when.**

(1) All leases shall be made at a rental of six percent on the appraised value, payable annually in advance. The lessee shall pay the appraised value of the improvements on such land, which amount shall be immediately paid to the owner or owners of the improvements. Applications for the lease of any such lands not leased at public offering may be made at any time to the Board of Educational Lands and Funds; *Provided*, if there are two or more persons wishing to lease the same land, the board shall auction off and lease the land to

the person who, in addition to the six percent rental, will pay the highest cash bonus for the lease.

(2) Each lease, referred to in subsection (1) of this section, shall contain a covenant or contract that the land contained in such lease may be appraised every five years. At the expiration of twelve years, the lessee shall deliver up the said land to the state; *Provided*, any lessee of saline lands may apply in writing to the chairman of the county board to have the lands embraced in such lease, or any part thereof, appraised for the purpose of sale, and when so appraised, the saline lands embraced in such application shall become subject to all the provisions governing the sale of educational lands belonging to the state, except as provided in sections 72-501 to 72-504.

**Source:** Laws 1889, c. 94, § 5, p. 581; Laws 1893, c. 22, § 1, p. 158; R.S.1913, § 5879; C.S.1922, § 5241; C.S.1929, § 72-504; R.S. 1943, § 72-504; Laws 1957, c. 305, § 1, p. 1110.

## ARTICLE 6

### JURISDICTION CEDED TO THE UNITED STATES

#### Section

- 72-601. Repealed. Laws 1969, c. 593, § 1.  
 72-602. Repealed. Laws 1969, c. 593, § 1.  
 72-603. Repealed. Laws 1969, c. 593, § 1.  
 72-604. Repealed. Laws 1969, c. 593, § 1.  
 72-605. Repealed. Laws 1969, c. 593, § 1.  
 72-606. Repealed. Laws 1969, c. 593, § 1.  
 72-607. National monuments; concurrent jurisdiction with United States; when effective.

**72-601 Repealed. Laws 1969, c. 593, § 1.**

**72-602 Repealed. Laws 1969, c. 593, § 1.**

**72-603 Repealed. Laws 1969, c. 593, § 1.**

**72-604 Repealed. Laws 1969, c. 593, § 1.**

**72-605 Repealed. Laws 1969, c. 593, § 1.**

**72-606 Repealed. Laws 1969, c. 593, § 1.**

**72-607 National monuments; concurrent jurisdiction with United States; when effective.**

(1) Concurrent jurisdiction over crimes and offenses under the laws of the state shall be ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

- (a) The Scottsbluff National Monument;
- (b) The Agate Fossil Beds National Monument; and
- (c) The Homestead National Monument.

(2) The concurrent jurisdiction ceded by subsection (1) of this section shall be vested upon acceptance by the United States by and through its appropriate officials and shall continue as long as the lands within the designated areas are dedicated to park purposes.

(3) The Governor is hereby authorized and empowered to execute all proper conveyances necessary to grant the cession provided in this section upon request of the United States by its appropriate officials.

(4) The State of Nebraska shall retain concurrent criminal jurisdiction with the United States over all lands affected by this section.

**Source:** Laws 1985, LB 223, § 1; Laws 1987, LB 233, § 1.

**ARTICLE 7**

**STATE CAPITAL AND CAPITOL BUILDING**

**Cross References**

**Constitutional provisions:**

Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.

Removal or relocation of capital, see Article XV, section 12, Constitution of Nebraska.

**Capitol Commission, Nebraska**, created, see section 81-1108.32.

**Capitol Commission, Nebraska, Office of the**, established, see section 72-2204.

**Deferred Building Renewal Act**, see section 81-190.

**State banner**, where displayed, see sections 50-116 and 90-102.

**State Capitol Environs Act, Nebraska**, see section 90-301.

**Section**

- 72-701. State capital; location.
- 72-701.01. Nebraska Emergency Seat of State Government Act; act, how cited.
- 72-701.02. Attack, defined.
- 72-701.03. Emergency seat of state government; temporary location; designation.
- 72-701.04. Emergency seat of government; temporary location; validity of official acts.
- 72-701.05. Emergency seat of state government; designation, when; plans and preparations; Governor; adopt; purchase of real estate prohibited; exception.
- 72-701.06. Sections, how construed; precedence over other laws.
- 72-701.07. Repealed. Laws 1963, c. 340, § 1.
- 72-701.08. Transferred to section 81-1108.22.
- 72-702. Repealed. Laws 1973, LB 149, § 5.
- 72-703. Department of Correctional Services adult correctional facility; location.
- 72-704. Repealed. Laws 1955, c. 278, § 6.
- 72-705. Repealed. Laws 1955, c. 278, § 6.
- 72-706. Transferred to section 81-1108.17.
- 72-706.01. Transferred to section 81-1108.18.
- 72-707. Transferred to section 81-1118.02.
- 72-708. Transferred to section 81-1108.19.
- 72-709. Transferred to section 81-1108.20.
- 72-709.01. Repealed. Laws 1974, LB 1048, § 45.
- 72-709.02. Transferred to section 81-1108.23.
- 72-709.03. Repealed. Laws 1959, c. 266, § 1.
- 72-710. Transferred to section 81-1108.26.
- 72-710.01. Transferred to section 81-1108.27.
- 72-710.02. Transferred to section 81-1108.28.
- 72-710.03. Transferred to section 81-1108.29.
- 72-711. Transferred to section 81-1108.30.
- 72-712. Transferred to section 81-1108.31.
- 72-713. Repealed. Laws 1951, c. 241, § 5.
- 72-714. Repealed. Laws 1951, c. 241, § 5.
- 72-715. Repealed. Laws 1951, c. 241, § 5.
- 72-716. Transferred to section 81-1108.32.
- 72-716.01. Transferred to section 81-1108.33.
- 72-716.02. Transferred to section 81-1108.34.
- 72-716.03. Transferred to section 81-1108.35.
- 72-716.04. Transferred to section 81-1108.37.
- 72-717. Repealed. Laws 1974, LB 1048, § 45.
- 72-718. Transferred to section 81-1108.38.
- 72-718.01. Repealed. Laws 1971, LB 1031, § 2.

## Section

- 72-718.02. Repealed. Laws 1971, LB 1031, § 2.
- 72-718.03. Repealed. Laws 1993, LB 311, § 7.
- 72-718.04. Repealed. Laws 1984, LB 933, § 20.
- 72-718.05. Repealed. Laws 1993, LB 311, § 7.
- 72-718.06. Repealed. Laws 1972, LB 1436, § 1.
- 72-718.07. Transferred to section 81-1108.40.
- 72-719. Repealed. Laws 1982, LB 592, § 2.
- 72-720. Repealed. Laws 2000, LB 1135, § 34.
- 72-721. Repealed. Laws 2000, LB 1135, § 34.
- 72-722. Repealed. Laws 2000, LB 1135, § 34.
- 72-723. State Capitol; monuments and memorials; permanent fixtures; removal with consent of Legislature.
- 72-724. Nebraska Hall of Fame Commission; created; members; appointment; administration.
- 72-725. Nebraska Hall of Fame; location.
- 72-726. Nebraska Hall of Fame; purpose.
- 72-727. Rules and regulations.
- 72-728. Persons named to Nebraska Hall of Fame; limitations; Nebraskans awarded Medal of Honor; plaque.
- 72-729. Nebraska Hall of Fame Commission; powers.
- 72-729.01. Hall of Fame Trust Fund; created; use.
- 72-730. State Capitol Restoration Fund; created; investment.
- 72-731. Repealed. Laws 1981, LB 497, § 1.

**72-701 State capital; location.**

The city of Lincoln is declared to be the permanent seat of government of the State of Nebraska, at which all the public offices of the state shall be kept and at which all the sessions of the Legislature shall be held.

**Source:** Laws 1867, § 3, p. 53; R.S.1913, § 5885; C.S.1922, § 5248; C.S.1929, § 72-701; R.S.1943, § 72-701.

**72-701.01 Nebraska Emergency Seat of State Government Act; act, how cited.**

Sections 72-701.01 to 72-701.06 shall be known and may be cited as the Nebraska Emergency Seat of State Government Act.

**Source:** Laws 1959, c. 332, § 1, p. 1207.

**72-701.02 Attack, defined.**

As used in sections 72-701.01 to 72-701.06, the term attack means any action or series of actions by an enemy of the United States, causing, or which may cause substantial injury or damage to civilian persons or property in the United States in any manner, whether by sabotage, or by the use of bombs, missiles or shellfire, or by atomic, radiological, chemical, bacteriological or biological means, or by other weapons or processes.

**Source:** Laws 1959, c. 332, § 2, p. 1207.

**72-701.03 Emergency seat of state government; temporary location; designation.**

Whenever, due to an emergency resulting from the effects of an enemy attack or the imminent threat thereof, it becomes imprudent, inexpedient or impossible to conduct the affairs of the state government at the permanent seat of state government in the city of Lincoln, the Governor, by proclamation and as often

as the exigencies of the situation may require, shall designate a temporary location or locations for an emergency seat of state government at such place or places, within or without this state, as he may deem proper and advisable under the circumstances, and he forthwith shall take such action and shall issue such orders and directives as may be necessary for the prompt and orderly transition of the affairs of the state government to such temporary location or locations. Such temporary location or locations shall be and remain the emergency seat of state government until another temporary location or locations shall be designated in the same manner, or until the Governor, by proclamation, or the Legislature, by resolution approved by the Governor, shall declare the emergency to be ended, at which time the seat of state government shall be returned to its permanent location in Lincoln, or shall be removed to such other city in this state as shall be designated the new permanent seat of state government, in accordance with the Constitution of Nebraska and general laws of this state.

**Source:** Laws 1959, c. 332, § 3, p. 1207.

**72-701.04 Emergency seat of government; temporary location; validity of official acts.**

During such time as such temporary location or locations shall remain the emergency seat of state government, all official acts done or performed thereat by or on the part of any officer, office, department, division, commission, court or board, or any other agency or authority of this state, including the Legislature, whether in regular, extraordinary, or emergency session, and all proceedings or court actions involving the state or its agencies or authorities, now or hereafter required to be brought or conducted at the seat of state government, shall be as valid, effective, and binding as if regularly done, performed, brought, or conducted at the permanent seat of state government.

**Source:** Laws 1959, c. 332, § 4, p. 1208.

**72-701.05 Emergency seat of state government; designation, when; plans and preparations; Governor; adopt; purchase of real estate prohibited; exception.**

(1) The official designation of the location or locations of the emergency seat of state government, and the removal thereto of the government of the state, shall in no event precede: (a) The inception of an attack; or (b) the inception of a strategic or tactical warning period duly proclaimed by the President of the United States, the Governor of Nebraska, or by both such officials, and based on the imminence of an attack.

(2) Prior to any such attack or warning period, however, and subject to such rules and regulations as the Governor may promulgate, such preliminary plans and preparations may be made as shall be deemed necessary and advisable to facilitate the subsequent accomplishment, during such emergency, of the actions provided in sections 72-701.01 to 72-701.06. Such planning and preparations may include any or all of the following steps, but shall not necessarily be limited thereto: (a) Selection of a tentative location or locations for the emergency seat of state government in the event that, as provided in subsection (1) of this section, it subsequently becomes necessary and advisable to designate such tentative location or locations as the official location or locations of the emergency seat of state government; (b) negotiation with local authorities, property owners, and other proper persons, for the possible use and occupancy

of specific buildings or areas or buildings and areas, at or near such tentative location or locations, for the purposes mentioned in sections 72-701.01 to 72-701.06 during a subsequent emergency; and (c) storing and stockpiling, at or near the tentative location or locations, of essential supplies and equipment, and vital records or duplicates thereof which would be necessary to permit the continuity of the governmental operations of the state in an emergency.

(3) Prior to an attack or warning period, as set out in subsection (1) of this section, neither the state, nor any official or agency thereof, shall, except only for the storage and safeguarding of vital records and duplicates thereof, purchase, contract for the purchase of, or obligate funds of the state for the purchase of any real estate or appurtenance thereto, for subsequent use as an emergency seat of state government.

**Source:** Laws 1959, c. 332, § 5, p. 1208.

**72-701.06 Sections, how construed; precedence over other laws.**

The provisions of sections 72-701.01 to 72-701.06, in the event they shall be employed, shall control and take precedence over any provision of any other law to the contrary or in conflict therewith; *Provided*, that nothing herein shall be construed as contravening, suspending, or otherwise affecting the provisions of the Constitution of Nebraska or general laws of this state relating to the permanent relocation of the seat of state government.

**Source:** Laws 1959, c. 332, § 6, p. 1209.

**72-701.07 Repealed. Laws 1963, c. 340, § 1.**

**72-701.08 Transferred to section 81-1108.22.**

**72-702 Repealed. Laws 1973, LB 149, § 5.**

**72-703 Department of Correctional Services adult correctional facility; location.**

A Department of Correctional Services adult correctional facility of the state shall be located upon a reservation in the city of Lincoln or upon lands belonging to the state and adjacent to the city of Lincoln.

**Source:** Laws 1867, § 12, p. 55; R.S.1913, § 5887; C.S.1922, § 5250; C.S.1929, § 72-703; R.S.1943, § 72-703; Laws 1993, LB 31, § 21.

**Cross References**

For provisions relating to the Department of Correctional Services adult correctional facility, see Chapter 83, article 4.

**72-704 Repealed. Laws 1955, c. 278, § 6.**

**72-705 Repealed. Laws 1955, c. 278, § 6.**

**72-706 Transferred to section 81-1108.17.**

**72-706.01 Transferred to section 81-1108.18.**

**72-707 Transferred to section 81-1118.02.**

**72-708 Transferred to section 81-1108.19.**

**72-709 Transferred to section 81-1108.20.**

72-709.01 Repealed. Laws 1974, LB 1048, § 45.

72-709.02 Transferred to section 81-1108.23.

72-709.03 Repealed. Laws 1959, c. 266, § 1.

72-710 Transferred to section 81-1108.26.

72-710.01 Transferred to section 81-1108.27.

72-710.02 Transferred to section 81-1108.28.

72-710.03 Transferred to section 81-1108.29.

72-711 Transferred to section 81-1108.30.

72-712 Transferred to section 81-1108.31.

72-713 Repealed. Laws 1951, c. 241, § 5.

72-714 Repealed. Laws 1951, c. 241, § 5.

72-715 Repealed. Laws 1951, c. 241, § 5.

72-716 Transferred to section 81-1108.32.

72-716.01 Transferred to section 81-1108.33.

72-716.02 Transferred to section 81-1108.34.

72-716.03 Transferred to section 81-1108.35.

72-716.04 Transferred to section 81-1108.37.

72-717 Repealed. Laws 1974, LB 1048, § 45.

72-718 Transferred to section 81-1108.38.

72-718.01 Repealed. Laws 1971, LB 1031, § 2.

72-718.02 Repealed. Laws 1971, LB 1031, § 2.

72-718.03 Repealed. Laws 1993, LB 311, § 7.

72-718.04 Repealed. Laws 1984, LB 933, § 20.

72-718.05 Repealed. Laws 1993, LB 311, § 7.

72-718.06 Repealed. Laws 1972, LB 1436, § 1.

72-718.07 Transferred to section 81-1108.40.

72-719 Repealed. Laws 1982, LB 592, § 2.

72-720 Repealed. Laws 2000, LB 1135, § 34.

72-721 Repealed. Laws 2000, LB 1135, § 34.

72-722 Repealed. Laws 2000, LB 1135, § 34.

72-723 State Capitol; monuments and memorials; permanent fixtures; removal with consent of Legislature.

All monuments and memorials now fixed to the building or the grounds of the State Capitol shall be regarded as permanent fixtures, and shall not be removed without the consent of the Legislature.

**Source:** Laws 1953, c. 262, § 1, p. 872.

**72-724 Nebraska Hall of Fame Commission; created; members; appointment; administration.**

(1) There is hereby created a Nebraska Hall of Fame Commission, which shall consist of seven members, six of whom shall be appointed by the Governor. The Director of the Nebraska State Historical Society shall be the seventh member of the commission and shall serve as secretary of the commission. The Governor shall appoint no more than three members of the commission from the same political party. The Governor shall consider gender and ethnic diversity and the person's appreciation for the history and culture of the state when making the appointments. In making the initial appointments of the commission, the Governor shall appoint two members for a term of two years, two members for a term of four years, and two members for a term of six years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the commission for a term of six years to succeed the member whose term expires. The members shall serve without compensation. The Governor shall be an ex officio member of the commission.

(2) The Nebraska State Historical Society shall be responsible for the administration of the Nebraska Hall of Fame Commission.

**Source:** Laws 1961, c. 355, § 1, p. 1118; Laws 1998, LB 1129, § 3; Laws 2005, LB 37, § 1.

**72-725 Nebraska Hall of Fame; location.**

The Nebraska Hall of Fame shall be located in the State Capitol and other locations as approved by the Nebraska Hall of Fame Commission.

**Source:** Laws 1961, c. 355, § 2, p. 1118; Laws 1998, LB 1129, § 4.

**72-726 Nebraska Hall of Fame; purpose.**

The purpose of the Nebraska Hall of Fame shall be to bring to public attention and to recognize officially those people who, in their lives, have achieved prominence and who were outstanding Nebraskans. For the purpose of this section Nebraskans shall mean those (1) who were born in Nebraska, (2) who gained prominence while living in Nebraska, or (3) who lived in Nebraska and whose residence in Nebraska was an important influence on their lives and which contributed to their greatness.

**Source:** Laws 1961, c. 355, § 3, p. 1118.

**72-727 Rules and regulations.**

The Nebraska Hall of Fame Commission shall adopt and promulgate rules and regulations to establish criteria of eligibility for inclusion in the Nebraska Hall of Fame and to establish standards for the creation, design, size, configuration, and placement of busts or other appropriate objects.

**Source:** Laws 1961, c. 355, § 4, p. 1119; Laws 1998, LB 1129, § 5.



**72-728 Persons named to Nebraska Hall of Fame; limitations; Nebraskans awarded Medal of Honor; plaque.**

(1) Except as provided in subsection (2) of this section, the Nebraska Hall of Fame Commission shall not name more than one person to the Nebraska Hall of Fame during each five-year period beginning on and after January 1, 2005. During the first two years of each five-year period, the commission shall receive nominations of candidates to be named to the Nebraska Hall of Fame. The commission shall review the nominations and may select the finalists for induction. During the subsequent two years of each five-year period, the commission shall review the finalists, if any, and shall hold public hearings regarding the finalists in each of the congressional districts. After the hearings, the commission may select one finalist for induction. If a finalist is selected for induction, the commission shall name him or her to the Nebraska Hall of Fame during the final year of each five-year period. No individual shall be named to the Nebraska Hall of Fame until at least thirty-five years after such person's demise.

(2) Notwithstanding the limitations imposed by subsection (1) of this section, the commission shall procure an appropriate plaque upon which shall be placed the names of each Nebraskan awarded the Medal of Honor as a result of such person's services in the armed forces of the United States. Such plaque shall have sufficient space for listing the names of persons who shall be awarded the Medal of Honor in the future. The plaque shall have a suitable place in the State Capitol.

**Source:** Laws 1961, c. 355, § 5, p. 1119; Laws 1969, c. 595, § 1, p. 2448; Laws 1976, LB 670, § 1; Laws 1998, LB 1129, § 6; Laws 2005, LB 37, § 2.

**72-729 Nebraska Hall of Fame Commission; powers.**

The Nebraska Hall of Fame Commission shall have power:

(1) To contract for the making and placing of busts or other appropriate objects commemorating the persons chosen to be placed in the State Capitol or other location as approved by the commission. No busts or other appropriate objects commemorating the persons chosen shall be placed in the State Capitol except upon the approval of the Nebraska Capitol Commission; and

(2) To receive and disburse gifts.

**Source:** Laws 1963, c. 414, § 1, p. 1336; Laws 1974, LB 1048, § 40; Laws 1993, LB 311, § 2; Laws 1998, LB 1129, § 7.

**72-729.01 Hall of Fame Trust Fund; created; use.**

There is hereby created the Hall of Fame Trust Fund to be administered by the Nebraska Hall of Fame Commission for the purpose of the creation, design, size, configuration, and placement of busts or other appropriate objects as authorized in section 72-729. Deposits to such fund shall include money received from public donation and from funds appropriated specifically for such purpose by the Legislature.

**Source:** Laws 1973, LB 282, § 1; Laws 1998, LB 1129, § 8.

**72-730 State Capitol Restoration Fund; created; investment.**

The State Capitol Restoration 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 2006, LB 1131, § 3; Laws 2007, LB323, § 1.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-731 Repealed. Laws 1981, LB 497, § 1.**

**ARTICLE 8**

**PUBLIC BUILDINGS**

**Cross References**

Provisions relating to materiel administrator inapplicable, see section 81-146.

Public lettings, how conducted, see section 73-101 et seq.

**Section**

- 72-801. Public buildings; cost; limitation; use; change prohibited.
- 72-802. Public buildings; plans and specifications; limitations; bids; appropriations; limit; exceptions; violation; penalty.
- 72-803. Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions.
- 72-804. New state building; code requirements.
- 72-805. Buildings constructed with state funds; code requirements.
- 72-806. Enforcement.
- 72-807. Repealed. Laws 1959, c. 265, § 1.
- 72-808. Historic structure; legislative findings.
- 72-809. Historic structure; defined.
- 72-810. Historic structure; alterations; requirements.
- 72-811. Vacant buildings and excess land; terms, defined.
- 72-812. Vacant Building and Excess Land Committee; created; members.
- 72-813. Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.
- 72-814. Vacant buildings and excess land; committee order; transfer of responsibilities and records; director; powers.
- 72-815. Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.
- 72-816. Vacant Building and Excess Land Cash Fund; created; use; investment; restrictions.
- 72-817. Applicability of sections.
- 72-818. State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties.

**72-801 Public buildings; cost; limitation; use; change prohibited.**

Any public building that is erected or repaired and for which an appropriation is made by the Legislature shall be constructed or repaired in a complete manner within the limits of such appropriation. Except as provided in sections 72-811 to 72-818 and 79-11,109, no building shall be changed or diverted from the use or purpose, kind, or class of building from that for which the appropriation was originally made.

**Source:** Laws 1911, c. 131, § 1, p. 441; R.S.1913, § 5891; C.S.1922, § 5258; C.S.1929, § 72-1001; R.S.1943, § 72-801; Laws 1973, LB 547, § 1; Laws 1992, LB 1241, § 4; Laws 1995, LB 567, § 2; Laws 1996, LB 900, § 1059; Laws 1998, Spec. Sess., LB 1, § 5; Laws 1999, LB 813, § 4.

**72-802 Public buildings; plans and specifications; limitations; bids; appropriations; limit; exceptions; violation; penalty.**

Any officer or board charged with the general supervision of the erection and repair of the public buildings belonging to the state shall prepare or have prepared plans and specifications of the building to be erected or repaired, and such plans shall be prepared in such a manner that the completed building, landscaping, and parking facilities, including the cost of equipment and fixtures necessary therefor, or the completed repair cost shall not exceed the amount authorized for that purpose. Construction may be commenced after contracts are awarded, but the obligation of the state in any biennium under such contracts shall not exceed the amount appropriated for that purpose in such biennium. When contracts are submitted to public bidding and a certain item is specified by trade name, make, or catalog number, a bid for the furnishing of an alternate item, equal thereto in the opinion of the architects and officers or board involved and submitted within the time limits set for receipt of bids, shall not be rejected solely on the basis that such item was not approved prior to the submission of bids. No officer, board, architect, superintendent, or contractor shall change any plan for any public building, for which an appropriation is made by the Legislature, so as to exceed such appropriation, and any officer, board, architect, superintendent, or contractor who violates any of the provisions of this section and section 72-801 shall be deemed guilty of a Class II misdemeanor.

**Source:** Laws 1911, c. 131, § 2, p. 442; R.S.1913, § 5892; C.S.1922, § 5259; C.S.1929, § 72-1002; R.S.1943, § 72-802; Laws 1967, c. 470, § 1, p. 1463; Laws 1973, LB 547, § 2; Laws 1977, LB 39, § 180; Laws 1986, LB 258, § 15.

**72-803 Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions.**

(1) The state and any department or agency thereof, subject to the powers of the state building division of the Department of Administrative Services, shall have general charge of the erection of new buildings which are being erected for such department or agency, the repair and improvement of buildings under the control of such department or agency, including fire escapes, and the improvement of grounds under the control of such department or agency.

(2) Buildings and other improvements costing more than fifty thousand dollars shall be (a) constructed under the general charge of the department or agency as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (4) of this section.

(3) The successful bidder at the letting shall enter into a contract with the department or agency, prepared as provided for by subsection (4) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department or agency includes a bond requirement in the specifications for the project.

(4) When contracts are to be let by the department or agency as provided in subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building

division stating that sealed proposals will be received by the department or agency at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department or agency. All bids or proposals shall be accompanied by a certified check or by a bid bond in a sum fixed by the department or agency and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department or agency shall exclude it from such a contract.

**Source:** Laws 1990, LB 257, § 4; Laws 1992, LB 1241, § 5; Laws 1995, LB 530, § 1; Laws 2007, LB256, § 1.

#### **72-804 New state building; code requirements.**

(1) Any new state building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(2) Any new lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building and any new building envelope components installed in a state-owned building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(3) The State Building Administrator of the Department of Administrative Services, in consultation with the State Energy Office, may specify:

- (a) A more recent edition of the International Energy Conservation Code;
- (b) Additional energy efficiency or renewable energy requirements for buildings; and
- (c) Waivers of specific requirements which are demonstrated through life-cycle cost analysis to not be in the state's best interest. The agency receiving the funding shall be required to provide a life-cycle cost analysis to the State Building Administrator.

**Source:** Laws 1999, LB 755, § 1; Laws 2003, LB 643, § 3; Laws 2004, LB 888, § 1; Laws 2011, LB329, § 1.

#### **72-805 Buildings constructed with state funds; code requirements.**

The 2009 International Energy Conservation Code applies to all new buildings constructed in whole or in part with state funds after August 27, 2011. The State Energy Office shall review building plans and specifications necessary to determine whether a building will meet the requirements of this section. The State Energy Office shall provide a copy of its review to the agency receiving funding. The agency receiving the funding shall verify that the building as constructed meets or exceeds the code. The verification shall be provided to the State Energy Office. The State Energy Office shall, in consultation with the State Building Administrator of the Department of Administrative Services, adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1999, LB 755, § 2; Laws 2004, LB 888, § 2; Laws 2011, LB329, § 2.

#### **72-806 Enforcement.**

The enforcement provisions of Chapter 1 of the 2009 International Energy Conservation Code shall not apply to buildings subject to section 72-804.

**Source:** Laws 1999, LB 755, § 3; Laws 2003, LB 643, § 4; Laws 2004, LB 888, § 3; Laws 2011, LB329, § 3.

**72-807 Repealed. Laws 1959, c. 265, § 1.**

**72-808 Historic structure; legislative findings.**

The Legislature finds that:

- (1) The preservation of historic structures will enrich life for Nebraska's citizens both today and for future generations;
- (2) Many historic structures are owned by the state; and
- (3) Efforts should be made by the state to identify, preserve, maintain, and restore such historic structures whenever possible.

**Source:** Laws 1986, LB 563, § 1.

**72-809 Historic structure; defined.**

For purposes of sections 72-808 to 72-810, historic structure shall mean any building significant in American history or architecture on a local, state, or national level.

**Source:** Laws 1986, LB 563, § 2.

**72-810 Historic structure; alterations; requirements.**

Improvements, alterations, or changes made by the state, its agencies, or departments on or to any historic structure owned by the State of Nebraska shall be in keeping with its historical or architectural significance. Such alterations shall be made according to standards set by the United States Department of the Interior. No alteration shall be made without review and comment by the State Historic Preservation Officer. If the state, its agencies, or departments do not agree with the review and comment of the officer, a final determination as to what action must be followed by the state shall be made by the Governor. A state agency or department shall only be required to comply with this section if it has been notified in writing by the officer that a particular structure is a historic structure.

**Source:** Laws 1986, LB 563, § 3; Laws 1989, LB 18, § 5.

**72-811 Vacant buildings and excess land; terms, defined.**

For purposes of sections 72-811 to 72-818:

- (1) Committee shall mean the Vacant Building and Excess Land Committee;
- (2) Excess, referring to land, shall mean (a) unused in whole or in part by any state agency for the purposes for which the land was acquired or received or (b) without current defined plans by any state agency for the use of the land for the agency's mission for the next fiscal year; and
- (3) Vacant, referring to buildings, shall mean (a) unoccupied, (b) unused in whole or in part by any state agency for the purposes for which the building was designed, intended, or remodeled, or (c) without current defined plans by

any state agency for the use of the building for the agency's mission for the next fiscal year.

**Source:** Laws 1988, LB 1143, § 1; Laws 1990, LB 830, § 1; Laws 1992, LB 1241, § 6; Laws 1995, LB 567, § 3.

**72-812 Vacant Building and Excess Land Committee; created; members.**

The Vacant Building and Excess Land Committee is hereby created. The committee shall be composed of the Director of Administrative Services, the State Building Administrator, and the administrator of the Task Force for Building Renewal created pursuant to section 81-174. When reviewing and considering action to be taken in regard to a particular building or piece of land, the committee shall also include a representative of the state agency responsible for the building or land as a nonvoting member.

**Source:** Laws 1988, LB 1143, § 2; Laws 1990, LB 830, § 2; Laws 1992, LB 1241, § 7; Laws 1997, LB 314, § 3.

**72-813 Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.**

(1) Each state agency shall by September 15 of each year submit to the State Building Administrator a list of all state-owned buildings and land for which it is responsible and shall note the current and planned uses of each building and parcel of land. The State Building Administrator shall compile the information on state-owned buildings and land and provide it, along with any other information or recommendations he or she may consider relevant to the purposes of sections 72-811 to 72-818, to the Vacant Building and Excess Land Committee and to the Legislative Fiscal Analyst. The information provided to the Legislative Fiscal Analyst shall be submitted electronically.

(2) The committee shall meet to review the information and consider further action or possible amendments to orders made pursuant to this section. If the committee determines that there is reason to believe that any particular state-owned building or piece of land is vacant or excess, the committee shall review the status of the building or land and by majority vote determine whether it should be declared vacant or excess.

(3) If the committee declares a building or land to be vacant or excess, it shall order either maintenance of the building or land by the state building division of the Department of Administrative Services or the disposal of the building or land through sale, lease, demolition, or otherwise. Any order for disposal of a building may include related lands. In determining the appropriate action to be taken in regard to a building or land, the committee shall consider the benefits to the state of the alternative possible actions, including cost-effectiveness, other possible future uses of the building or land for state purposes, and the necessity or utility of the building or land for the furtherance of existing or planned state programs.

**Source:** Laws 1988, LB 1143, § 3; Laws 1990, LB 830, § 3; Laws 1992, LB 1241, § 8; Laws 1995, LB 567, § 4; Laws 2012, LB782, § 130.

**72-814 Vacant buildings and excess land; committee order; transfer of responsibilities and records; director; powers.**

When a building or land is declared vacant or excess by the committee, the committee shall certify to the Director of Administrative Services its determination and order in regard to the building or land. All responsibilities for and records of ownership of the building or land and all records of maintenance of the building or land shall be transferred as soon as possible to the Department of Administrative Services.

If the order includes the sale, lease, or other disposal of any building or land as an appropriate action, the director may execute any quitclaim deed, lease, or other instrument necessary to sell, lease, or dispose of the building or land. The director may reserve, in the best interest of the state, an easement, license, or other interest in the building or land for the state in such sale, lease, or disposal. The director may also trade the building or land for other property needed by the state. The director may, at the expense of the state agency formerly responsible for the building or land, remove or order the agency to remove any movable property not attached to the building or land.

**Source:** Laws 1988, LB 1143, § 4; Laws 1990, LB 830, § 4; Laws 1992, LB 1241, § 9.

**72-815 Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.**

(1) The state building division of the Department of Administrative Services shall be responsible for the sale, lease, or other disposal of a building or land, whichever action is ordered by the committee.

(2) If a building is to be demolished, section 72-810 shall not apply, but the state building division shall notify the State Historic Preservation Officer of such demolition at least thirty days prior to the beginning of the demolition or disassembly so that the officer may collect any photographic or other evidence he or she may find of historic value.

(3)(a) If a building or land is to be sold or leased, the state building division shall cause an appraisal to be made of the building or land. The sale, lease, or other disposal of the building or land shall comply with all relevant statutes pertaining to the sale or lease of surplus state property, except that if the state building division fails to receive an offer from a state agency in which the agency certifies that it (i) intends to use the building for the purposes for which it was designed, intended, or remodeled or to remodel the building for uses which will serve the agency's purposes or (ii) intends to use the land for the purposes for which it was acquired or received, the state building division shall then notify the Department of Economic Development that the building or land is available for sale or lease so that the department may refer to the state building division any potential buyers or lessees of which the department may be aware. The state building division may then sell or lease the building or land by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale and, if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property. The state building division may use the services of a real estate broker licensed under the Nebraska Real Estate License Act. Priority shall be given to other political subdivisions of state government, then to

persons contracting with the state or political subdivisions of the state who will use the building or land for middle-income or low-income rental housing for at least fifteen years, and finally to referrals from the Department of Economic Development.

(b) When a building or land designated for sale is listed in the National Register of Historic Places, the state building division, in its discretion and based on the best interests of the state, may follow the procedure outlined in subdivision (3)(a) of this section or may sell the building or land by any method deemed in the best interests of the state to a not-for-profit community organization that intends to maintain the historic and cultural integrity of the building or land.

(c) All sales and leases shall be in the name of the State of Nebraska. The state building division may provide that a deed of sale include restrictions on the building or land to ensure that the use and appearance of the building or land remain compatible with any adjacent state-owned property.

(d) Except as otherwise provided in subsection (4) of this section, the proceeds of the sale or lease shall be remitted to the State Treasurer for credit to the Vacant Building and Excess Land Cash Fund unless the state agency formerly responsible for the building or land certifies to the state building division that the building or land was purchased in part or in total from cash, federal, or revolving funds, in which event, after the costs of selling or leasing the building or land are deducted from the proceeds of the sale or lease and such amount is credited to the fund, the remaining proceeds of the sale or lease shall be credited to the cash, federal, or revolving fund in the percentage used in originally purchasing the building or land.

(4) Any state-owned military property, including any armories considered surplus property, shall be sold by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale, and if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property, and pursuant to section 72-816, all proceeds from the sale of the property, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds of the property, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund to the General Fund by the State Building Administrator.

(5) The state building division shall be responsible for the maintenance of the building or land if maintenance is ordered by the committee and shall be responsible for maintenance of the building or land pending sale or lease of the building or land.

(6) Land at the Hastings Regional Center determined by the committee to be excess shall be sold by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale and, if necessary, by private sale. The sale of land shall only occur after notice of the sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the land is located and not less than thirty days prior to the sale of the land. The proceeds from the sale of the land, less maintenance expenses pending the sale and selling expenses, but including



investment income on the sale proceeds, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund by the State Treasurer as follows:

(a) First, not exceeding five million three hundred seven thousand dollars to the General Fund; and

(b) Second, not exceeding three million dollars of available proceeds remaining to the Nebraska Capital Construction Fund.

**Source:** Laws 1988, LB 1143, § 5; Laws 1989, LB 18, § 6; Laws 1990, LB 830, § 5; Laws 1992, LB 1241, § 10; Laws 2000, LB 1216, § 21; Laws 2003, LB 403, § 6; Laws 2010, LB722, § 2; Laws 2013, LB199, § 30.

**Cross References**

Nebraska Real Estate License Act, see section 81-885.

**72-816 Vacant Building and Excess Land Cash Fund; created; use; investment; restrictions.**

(1) The Vacant Building and Excess Land Cash Fund is created. The fund shall consist of proceeds credited to the fund pursuant to sections 72-815 and 90-268. Except as provided in sections 90-268 and 90-269, the fund shall be used to pay for the maintenance of vacant state buildings and excess state land and for expenses related to the disposal of state buildings and land referred to the Department of Administrative Services by the committee pursuant to sections 72-811 to 72-818. The fund shall be administered by the state building division of the Department of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Funds may be transferred from the Vacant Building and Excess Land Cash Fund to the General Fund at the direction of the Legislature.

(2) If there are insufficient funds in the fund to enable the division to fully implement the orders of the committee issued pursuant to sections 72-811 to 72-818, the division shall implement them in the order which most efficiently meets the purposes of such sections.

(3) Funds appropriated to the Task Force for Building Renewal shall not be used to carry out any of the purposes of such sections (a) unless the building would otherwise qualify for the use of such funds pursuant to the Deferred Building Renewal Act and (b) except for any expenses incurred by the administrator of the Task Force for Building Renewal in fulfilling his or her duties under such sections.

**Source:** Laws 1988, LB 1143, § 6; Laws 1990, LB 830, § 6; Laws 1992, LB 1241, § 11; Laws 1994, LB 1066, § 73; Laws 1995, LB 567, § 5; Laws 1997, LB 314, § 4; Laws 1999, LB 873, § 6; Laws 2000, LB 1216, § 22; Laws 2002, Second Spec. Sess., LB 1, § 4; Laws 2003, LB 403, § 7; Laws 2005, LB 426, § 13; Laws 2006, LB 1061, § 11.

**Cross References**

Deferred Building Renewal Act, see section 81-190.

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-817 Applicability of sections.**

Sections 72-811 to 72-818 shall apply to every state agency except the University of Nebraska, the Nebraska state colleges, the Division of Aeronautics of the Department of Transportation, and the Board of Educational Lands and Funds, except that any such agency may elect to include under such sections any building or land for which it has responsibility. Such sections shall not apply to interests in real property held by the Department of Transportation.

**Source:** Laws 1988, LB 1143, § 7; Laws 1990, LB 830, § 7; Laws 1995, LB 567, § 6; Laws 2017, LB339, § 249.

**72-818 State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties.**

Except as provided in section 37-330, a state agency shall submit any request for granting a utility easement on state-owned land to the committee. The committee may only approve utility easements by majority vote. Utility easements may only be granted to political subdivisions or their contractors for utility or construction-related purposes. The committee shall certify the approval of a utility easement to the Director of Administrative Services who shall execute the instrument necessary to grant the easement. The state building division of the Department of Administrative Services shall be responsible for the implementation of easements granted under this section.

**Source:** Laws 1995, LB 567, § 1; Laws 2007, LB256, § 2.

**ARTICLE 9****LEASE OF SCHOOL LANDS FOR OIL AND GAS**

## Section

- 72-901. School lands; oil and gas leases; Board of Educational Lands and Funds; powers and duties.
- 72-902. Leases; terms and conditions; bids, when taken.
- 72-903. Leases; reservation of royalty to lessor; monthly accounting.
- 72-904. Lessees; bond required.
- 72-905. Leases; forfeiture; notice to lessee; hearing; filing of order.
- 72-906. Lease; application; form; contents.
- 72-907. Lease; sale; public auction required; notice; publication costs; payment.
- 72-908. Exploration, development, and operation for oil and gas production; agreements authorized.
- 72-909. Leases; reservation of use of lands for agricultural purposes; conditions.
- 72-910. Rules and regulations; authority of board.
- 72-911. Amended lease; exchange authorized; terms and conditions.
- 72-912. Leases; assignment; conditions of approval.

**72-901 School lands; oil and gas leases; Board of Educational Lands and Funds; powers and duties.**

The Board of Educational Lands and Funds is authorized and empowered to lease any school and public lands belonging to the state and under its control, including oil and gas rights which have been or may hereafter be reserved to the state, for oil and gas exploration and development upon terms and conditions herein prescribed. In all cases where the lands are under lease for grazing, agricultural or similar purposes, the rights of such lessees shall be protected.

**Source:** Laws 1943, c. 164, § 1, p. 579; R.S.1943, § 72-901.

**72-902 Leases; terms and conditions; bids, when taken.**

All oil and gas leases issued hereunder shall be for terms not to exceed ten years, and as long thereafter as oil or gas is produced in paying quantities from the land covered thereby. Such leases shall also provide for annual delay rentals of not less than fifty cents per acre of land leased. If two or more parties desire to lease the same land, the representatives of the Board of Educational Lands and Funds present at the offering shall accept bids from all or any parties, and the board may grant a lease to the person, partnership, limited liability company, or corporation that would pay for a lease contract on the land the greatest amount of such bonus. Lands shall be leased in as compact bodies as the form and area of the tracts subject to lease will permit. No lease shall embrace noncontiguous subdivisions of land unless such subdivision shall be within an area comprising not more than one square mile.

**Source:** Laws 1943, c. 164, § 2, p. 580; R.S.1943, § 72-902; Laws 1959, c. 333, § 1, p. 1211; Laws 1978, LB 802, § 1; Laws 1993, LB 121, § 459.

**72-903 Leases; reservation of royalty to lessor; monthly accounting.**

In every oil and gas lease granted pursuant hereto, there shall be reserved to the lessor a royalty of not less than twelve and one-half percent of all oil, gas, hydrocarbons and all other petroleum products produced and saved from the lands covered thereby and not used in connection with the development and operation of the leased premises, or twelve and one-half percent of the market value thereof at the leased premises. Such leases shall provide that the interest so reserved shall be produced free of cost to lessor and that an accounting shall be made therefor on a monthly basis.

**Source:** Laws 1943, c. 164, § 3, p. 580; R.S.1943, § 72-903.

**72-904 Lessees; bond required.**

The Board of Educational Lands and Funds shall require lessees of such oil and gas leases, and assigns thereof, to furnish bonds to the state in such form and substance as may be prescribed by the board, and in amounts adequate to indemnify the state against loss, damage or detriment by reason of the failure of the lessee to fully discharge the obligations contained in the lease, or assignment thereof; *Provided*, that a blanket bond may be accepted by the board to cover more than one lease issued to the same lessee.

**Source:** Laws 1943, c. 164, § 4, p. 580; R.S.1943, § 72-904.

**72-905 Leases; forfeiture; notice to lessee; hearing; filing of order.**

All oil and gas leases granted pursuant hereto shall provide for forfeiture and cancellation thereof upon the failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and a reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice, concerning which the lessee is in default. Such notice shall not be required in case of the failure of the lessee to pay any delay rental provided for in such lease. The Board of Educational Lands and Funds is granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases, under such rules and regulations as it may adopt; and any lessee, upon application therefor, shall be granted a

hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board. A copy of any order of forfeiture and cancellation made pursuant to this section shall be filed with the register of deeds of the county where the land is situated, but such filing shall not be a condition to the effectiveness of the order, and no further processing of any type shall be necessary to complete the record of such forfeiture and cancellation.

**Source:** Laws 1943, c. 164, § 5, p. 580; R.S.1943, § 72-905; Laws 1961, c. 356, § 1, p. 1120.

**72-906 Lease; application; form; contents.**

Applications for the issuance of any lease authorized by sections 72-901 to 72-912 shall be executed under oath by the applicant, applicant's agent or attorney, or an officer or agent of a corporation if the application is made by a corporation. The form of the application shall be prescribed by the Board of Educational Lands and Funds, and shall contain a description of the land, by legal subdivisions, upon which the lease is desired, and the terms upon which the applicant desires to acquire such lease.

**Source:** Laws 1943, c. 164, § 6, p. 581; R.S.1943, § 72-906.

**72-907 Lease; sale; public auction required; notice; publication costs; payment.**

No lease shall be sold except at public auction, to be held at the office of the Board of Educational Lands and Funds, after notice of the time and place of such sale by publication two consecutive weeks in a newspaper of general circulation in the State of Nebraska, and such other notice, if any, as the board may require. Proof of such publication shall be made by an affidavit of the publisher, manager, or foreman of such newspaper, to be filed in the office of the board. Subject to the board's right to reject all bids, such lease shall be sold to the highest and best bidder. The purchaser of such lease shall pay the cost of publishing the notice herein provided for. Should the lease not be sold following the publishing of such notice, the one who filed application for lease shall pay the publication costs, and, to secure the payment thereof, the board may require the applicant to furnish satisfactory security therefor.

**Source:** Laws 1943, c. 164, § 7, p. 581; R.S.1943, § 72-907; Laws 1999, LB 779, § 49.

**72-908 Exploration, development, and operation for oil and gas production; agreements authorized.**

The Board of Educational Lands and Funds is hereby authorized, in its discretion, to enter into appropriate agreements for the purpose of unit or cooperative exploration, development, and operation of acreage, or any part of the acreage, covered by leases granted pursuant hereto, with other acreage for the production of oil and gas. Such agreements shall provide for the allocation of production on a proportionate acreage or other agreed equitable basis.

**Source:** Laws 1943, c. 164, § 8, p. 581; R.S.1943, § 72-908; Laws 1955, c. 280, § 1, p. 885.

**72-909 Leases; reservation of use of lands for agricultural purposes; conditions.**

There shall be reserved, from leases granted pursuant hereto, the right to fully use and enjoy, for agricultural and grazing purposes, the area leased for oil and gas purposes, except such parts thereof as may be necessary for use in the development and operation thereof for oil and gas and in the marketing of production therefrom. The owner of the agricultural and grazing rights, as to lands covered by any oil and gas lease issued hereunder, shall have prior right to the use of water on said premises. The lessee shall pay all damages to growing crops, including grass, caused by operations under such lease, and, after due notice thereof, shall protect the lessor from claims of such nature.

**Source:** Laws 1943, c. 164, § 9, p. 582; R.S.1943, § 72-909.

**72-910 Rules and regulations; authority of board.**

The Board of Educational Lands and Funds shall have the power and authority to prescribe such rules and regulations as it may deem necessary and proper, but which are not inconsistent with the Constitution and statutes of this state, relating to the leasing of school and public lands for oil and gas exploration and development.

**Source:** Laws 1943, c. 164, § 10, p. 582; R.S.1943, § 72-910.

**72-911 Amended lease; exchange authorized; terms and conditions.**

Any holder of existing oil or gas leases heretofore issued by the Board of Educational Lands and Funds on properties of the nature covered hereby, shall have the right to exchange such lease for an amended lease issued under the provisions of sections 72-901 to 72-912, and embracing the same land. When the holder of any such lease makes written application to the board in due form for such exchange, the board shall issue an amended lease embracing the same land as the former lease in the ordinary and regulation form duly adopted by the board under the provisions of said sections, but there shall be deducted from the term for which such amended lease may be issued the time that has passed from the date of the issue of the former lease to the date of the issue of the amended lease, except that in no case shall the amended lease be granted for a longer period than seven years from the date of issue of the amended lease. Such amended lease shall provide for an increase of twenty-five cents per acre over the amount of the annual delay rental specified in the former lease.

**Source:** Laws 1943, c. 164, § 11, p. 582; R.S.1943, § 72-911.

**72-912 Leases; assignment; conditions of approval.**

Except as hereinafter provided, the assignment of any oil and gas lease issued under the provisions of sections 72-901 to 72-912, either in whole or in part, shall be permitted if made to an assignee qualified as provided herein. Such assignment shall not, however, be binding upon the state until filed with the Board of Educational Lands and Funds, accompanied by a filing fee of one dollar and a bond, and approved by the board, or its lawful representatives; *Provided*, that the approval of such assignment so filed and supported shall not be withheld in any case where satisfactory compliance has been made with the requirements of said sections. In no case shall the board be required to approve an assignment of a lease in part, covering a tract less than forty acres nor shall it be required to approve an assignment of an undivided interest in such lease until a showing, satisfactory to the board, has been made evidencing which one of the parties, assignor or assignee is to be the one to pay the delay rentals

thereafter accruing, as to an undivided interest thereafter to be jointly owned, nor shall it be required to approve an assignment covering an undivided interest of less than forty leasehold acres.

**Source:** Laws 1943, c. 164, § 12, p. 583; R.S.1943, § 72-912.

## ARTICLE 10 BUILDING FUNDS

### Section

- 72-1001. Nebraska Capital Construction Fund; created; use; investment.
- 72-1002. Repealed. Laws 1959, c. 265, § 1.
- 72-1003. Repealed. Laws 1959, c. 265, § 1.
- 72-1004. Repealed. Laws 1959, c. 265, § 1.
- 72-1005. State Building Fund; created; use; transfer of funds.
- 72-1006. Repealed. Laws 1963, c. 422, § 6.
- 72-1007. Repealed. Laws 1969, c. 594, § 4.
- 72-1008. Repealed. Laws 1972, LB 1044, § 1.
- 72-1009. Repealed. Laws 1972, LB 1044, § 1.
- 72-1010. Repealed. Laws 1972, LB 1044, § 1.
- 72-1011. Repealed. Laws 1972, LB 1044, § 1.

### **72-1001 Nebraska Capital Construction Fund; created; use; investment.**

The Nebraska Capital Construction Fund is created. The fund shall consist of revenue and transfers credited to the fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined by the Legislature. Transfers may be made from the fund to the Capitol Restoration Cash Fund at the direction of the Legislature. Any money in the Nebraska Capital Construction Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 426, § 1; Laws 2009, First Spec. Sess., LB2, § 3; Laws 2017, LB331, § 39.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-1002 Repealed. Laws 1959, c. 265, § 1.**

**72-1003 Repealed. Laws 1959, c. 265, § 1.**

**72-1004 Repealed. Laws 1959, c. 265, § 1.**

### **72-1005 State Building Fund; created; use; transfer of funds.**

The State Building Fund is created. The fund shall consist of administrative General Fund transfers credited to the State Building Fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not

limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined by the Legislature.

The State Treasurer shall administratively transfer from the General Fund to the State Building Fund such amounts as required to make expenditures, except that the fund balance in the State Building Fund plus any administrative fund transfers made shall not exceed the total state unexpended appropriations balances from the State Building Fund, as authorized by law. Such administrative transfers shall be made periodically as required to make expenditures from the State Building Fund.

**Source:** Laws 1947, c. 236, § 1, p. 751; Laws 1953, c. 287, § 71, p. 971; Laws 1955, c. 279, § 2, p. 883; Laws 1957, c. 307, § 1, p. 1113; Laws 1959, c. 413, § 1, p. 1379; Laws 1959, c. 331, § 3, p. 1206; Laws 1959, c. 334, § 1, p. 1212; Laws 1959, c. 335, § 1, p. 1214; Laws 1963, c. 418, § 4, p. 1344; Laws 1963, c. 422, § 1, p. 1348; Laws 1965, c. 441, § 1, p. 1398; Laws 1965, c. 478, § 3, p. 1540; Laws 1969, c. 594, § 2, p. 2447; Laws 1969, c. 584, § 78, p. 2392; Laws 1979, LB 187, § 260; Laws 2005, LB 426, § 14.

Under former law, the State Institutional and Military Department Fund was made up of other funds, namely, (1) the proceeds derived from a special tax, and (2) a part of the state's share of the intangible tax. Board of Regents v. Gillette, 149 Neb. 56, 30 N.W.2d 296 (1947).

**72-1006 Repealed. Laws 1963, c. 422, § 6.**

**72-1007 Repealed. Laws 1969, c. 594, § 4.**

**72-1008 Repealed. Laws 1972, LB 1044, § 1.**

**72-1009 Repealed. Laws 1972, LB 1044, § 1.**

**72-1010 Repealed. Laws 1972, LB 1044, § 1.**

**72-1011 Repealed. Laws 1972, LB 1044, § 1.**

**ARTICLE 11**

**STANDARDS FOR PUBLIC BUILDINGS**

Section

- 72-1101. Repealed. Laws 1993, LB 377, § 9.
- 72-1102. Repealed. Laws 1993, LB 377, § 9.
- 72-1103. Repealed. Laws 1993, LB 377, § 9.
- 72-1104. Repealed. Laws 1993, LB 377, § 9.
- 72-1105. Repealed. Laws 1993, LB 377, § 9.
- 72-1106. Repealed. Laws 1993, LB 377, § 9.
- 72-1107. Repealed. Laws 1993, LB 377, § 9.
- 72-1108. Repealed. Laws 1993, LB 377, § 9.
- 72-1109. Repealed. Laws 1993, LB 377, § 9.
- 72-1110. Repealed. Laws 1993, LB 377, § 9.
- 72-1111. Repealed. Laws 1993, LB 377, § 9.
- 72-1112. Repealed. Laws 1993, LB 377, § 9.
- 72-1113. Repealed. Laws 1993, LB 377, § 9.

## Section

- 72-1114. Repealed. Laws 1993, LB 377, § 9.
- 72-1115. Repealed. Laws 1993, LB 377, § 9.
- 72-1116. Repealed. Laws 1993, LB 377, § 9.
- 72-1117. Repealed. Laws 1993, LB 377, § 9.
- 72-1118. Repealed. Laws 1993, LB 377, § 9.
- 72-1119. Transferred to section 81-5,148.
- 72-1120. Transferred to section 81-5,149.
- 72-1121. Transferred to section 81-5,150.
- 72-1122. Transferred to section 81-5,147.
- 72-1123. Repealed. Laws 1993, LB 377, § 9.
- 72-1124. Repealed. Laws 1993, LB 377, § 9.

**72-1101 Repealed. Laws 1993, LB 377, § 9.**

**72-1102 Repealed. Laws 1993, LB 377, § 9.**

**72-1103 Repealed. Laws 1993, LB 377, § 9.**

**72-1104 Repealed. Laws 1993, LB 377, § 9.**

**72-1105 Repealed. Laws 1993, LB 377, § 9.**

**72-1106 Repealed. Laws 1993, LB 377, § 9.**

**72-1107 Repealed. Laws 1993, LB 377, § 9.**

**72-1108 Repealed. Laws 1993, LB 377, § 9.**

**72-1109 Repealed. Laws 1993, LB 377, § 9.**

**72-1110 Repealed. Laws 1993, LB 377, § 9.**

**72-1111 Repealed. Laws 1993, LB 377, § 9.**

**72-1112 Repealed. Laws 1993, LB 377, § 9.**

**72-1113 Repealed. Laws 1993, LB 377, § 9.**

**72-1114 Repealed. Laws 1993, LB 377, § 9.**

**72-1115 Repealed. Laws 1993, LB 377, § 9.**

**72-1116 Repealed. Laws 1993, LB 377, § 9.**

**72-1117 Repealed. Laws 1993, LB 377, § 9.**

**72-1118 Repealed. Laws 1993, LB 377, § 9.**

**72-1119 Transferred to section 81-5,148.**

**72-1120 Transferred to section 81-5,149.**

**72-1121 Transferred to section 81-5,150.**

**72-1122 Transferred to section 81-5,147.**

**72-1123 Repealed. Laws 1993, LB 377, § 9.**



**72-1124 Repealed. Laws 1993, LB 377, § 9.****ARTICLE 12****INVESTMENT OF STATE FUNDS****(a) NEBRASKA STATE FUNDS INVESTMENT ACT**

## Section

- 72-1201. Repealed. Laws 1969, c. 614, § 1.
- 72-1202. Repealed. Laws 1969, c. 614, § 1.
- 72-1203. Repealed. Laws 1969, c. 614, § 1.
- 72-1204. Repealed. Laws 1969, c. 614, § 1.
- 72-1205. Repealed. Laws 1969, c. 614, § 1.
- 72-1206. Repealed. Laws 1969, c. 614, § 1.
- 72-1207. Repealed. Laws 1969, c. 614, § 1.
- 72-1208. Repealed. Laws 1969, c. 614, § 1.
- 72-1209. Repealed. Laws 1969, c. 614, § 1.
- 72-1210. Repealed. Laws 1969, c. 614, § 1.
- 72-1211. Repealed. Laws 1969, c. 614, § 1.
- 72-1212. Repealed. Laws 1969, c. 614, § 1.
- 72-1213. Repealed. Laws 1969, c. 614, § 1.
- 72-1214. Repealed. Laws 1969, c. 614, § 1.
- 72-1215. Repealed. Laws 1969, c. 614, § 1.
- 72-1216. Repealed. Laws 1969, c. 614, § 1.
- 72-1217. Repealed. Laws 1969, c. 614, § 1.
- 72-1218. Repealed. Laws 1969, c. 614, § 1.
- 72-1219. Repealed. Laws 1969, c. 614, § 1.
- 72-1220. Repealed. Laws 1969, c. 614, § 1.
- 72-1221. Repealed. Laws 1969, c. 614, § 1.
- 72-1222. Repealed. Laws 1969, c. 614, § 1.
- 72-1223. Repealed. Laws 1969, c. 614, § 1.
- 72-1224. Repealed. Laws 1969, c. 614, § 1.
- 72-1225. Repealed. Laws 1969, c. 614, § 1.
- 72-1226. Repealed. Laws 1969, c. 614, § 1.
- 72-1227. Repealed. Laws 1969, c. 614, § 1.
- 72-1228. Repealed. Laws 1969, c. 614, § 1.
- 72-1229. Repealed. Laws 1969, c. 614, § 1.
- 72-1230. Repealed. Laws 1969, c. 614, § 1.
- 72-1231. Repealed. Laws 1969, c. 614, § 1.
- 72-1232. Repealed. Laws 1969, c. 614, § 1.
- 72-1233. Repealed. Laws 1969, c. 614, § 1.
- 72-1234. Repealed. Laws 1969, c. 614, § 1.
- 72-1235. Repealed. Laws 1969, c. 614, § 1.
- 72-1236. Repealed. Laws 1969, c. 614, § 1.
- 72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.
- 72-1237.01. Repealed. Laws 1997, LB 4, § 6.
- 72-1238. Nebraska Investment Council; members; qualifications.
- 72-1239. Nebraska Investment Council; purpose; members; meetings; compensation.
- 72-1239.01. Council; duties and responsibilities.
- 72-1240. State investment officer; appointment; qualifications; salary; removal.
- 72-1241. State investment officer; deputy; duties; bond or insurance.
- 72-1242. State investment officer; personnel; employ; approval of Governor; employees; duties; exempted from State Personnel System; when.
- 72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.
- 72-1244. State Treasurer; boards, commissions, departments, and agencies; money to invest; notify state investment officer; conditions.
- 72-1245. Repealed. Laws 1971, LB 152, § 7.
- 72-1246. State investment officer; investments; duties.

## PUBLIC LANDS, BUILDINGS, AND FUNDS

### Section

- 72-1246.01. Student loans; purchase.
- 72-1246.02. Student loans; sale; resale; conditions.
- 72-1246.03. Student loans; Nebraska State Colleges; service loans; security.
- 72-1246.04. Student loans; purchasing, selling, servicing; approval.
- 72-1246.05. Student loans; priority; liquidation of investments; prior investments, how treated; interest.
- 72-1246.06. Repealed. Laws 2011, LB 303, § 1.
- 72-1246.07. Repealed. Laws 2011, LB 303, § 1.
- 72-1246.08. Repealed. Laws 2011, LB 303, § 1.
- 72-1247. Repealed. Laws 2002, LB 407, § 67.
- 72-1248. Income from investments; disbursement.
- 72-1249. Expenses; costs; how paid.
- 72-1249.01. Repealed. Laws 1977, LB 364, § 2.
- 72-1249.02. State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.
- 72-1250. Securities in custody of State Treasurer; held in name of nominee; registered nominee; selection.
- 72-1250.01. Cash funds deposited with fiscal agent; constitute investment made by state investment officer.
- 72-1251. State Treasurer; interest, premium, income, and principal; collect.
- 72-1252. State investment officer; earned income; notice.
- 72-1253. Repealed. Laws 2003, LB 149, § 8.
- 72-1254. State investment officer; operations; report; contents; public inspection.
- 72-1255. Investment transactions; Auditor of Public Accounts; postaudits; report.
- 72-1256. Repealed. Laws 1981, LB 545, § 52.
- 72-1257. Default; proceedings.
- 72-1258. Investment of state funds; boards, commissions, departments, agencies, officials; powers and duties.
- 72-1259. State investment officer; political subdivisions; assistance; fee.
- 72-1260. Act, how cited.

### (b) NEBRASKA CAPITAL EXPANSION ACT

- 72-1261. Declaration of intent.
- 72-1262. Terms, defined.
- 72-1263. State investment officer; time deposit open account; conditions.
- 72-1264. Funds; when offered; time deposit open account; state investment officer; powers.
- 72-1265. State investment officer; deposits; fix interest rate and term; legislative intent.
- 72-1266. Nebraska Investment Council; adopt rules and regulations.
- 72-1267. State investment officer; combine and pool investable funds; when; prorate interest.
- 72-1268. Depositories; eligibility for funds; bond or bond alternatives.
- 72-1268.01. Funds deposited; bond; requirements.
- 72-1268.02. Bond; form.
- 72-1268.03. State investment officer; limitation on deposits.
- 72-1268.04. Depository; bond alternatives; requirements.
- 72-1268.05. Repealed. Laws 1996, LB 1274, § 57.
- 72-1268.06. Repealed. Laws 1996, LB 1274, § 57.
- 72-1268.07. Subsidiary bank of out-of-state bank holding company; filing required; deposit of public funds; restriction; applicability and construction of section.
- 72-1269. Act, how cited.

### (c) SOUTH AFRICAN INVESTMENTS

- 72-1270. Repealed. Laws 1994, LB 1066, § 149.
- 72-1271. Repealed. Laws 1994, LB 1066, § 149.
- 72-1272. Repealed. Laws 1994, LB 1066, § 149.
- 72-1273. Repealed. Laws 1994, LB 1066, § 149.
- 72-1274. Repealed. Laws 1994, LB 1066, § 149.
- 72-1275. Repealed. Laws 1994, LB 1066, § 149.

- Section  
 72-1276. Repealed. Laws 1994, LB 1066, § 149.  
           (d) REVIEW OF NEBRASKA INVESTMENT COUNCIL  
 72-1277. Legislative findings.  
 72-1278. Nebraska Investment Council; comprehensive review of council; contract.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

- 72-1201 Repealed. Laws 1969, c. 614, § 1.**  
**72-1202 Repealed. Laws 1969, c. 614, § 1.**  
**72-1203 Repealed. Laws 1969, c. 614, § 1.**  
**72-1204 Repealed. Laws 1969, c. 614, § 1.**  
**72-1205 Repealed. Laws 1969, c. 614, § 1.**  
**72-1206 Repealed. Laws 1969, c. 614, § 1.**  
**72-1207 Repealed. Laws 1969, c. 614, § 1.**  
**72-1208 Repealed. Laws 1969, c. 614, § 1.**  
**72-1209 Repealed. Laws 1969, c. 614, § 1.**  
**72-1210 Repealed. Laws 1969, c. 614, § 1.**  
**72-1211 Repealed. Laws 1969, c. 614, § 1.**  
**72-1212 Repealed. Laws 1969, c. 614, § 1.**  
**72-1213 Repealed. Laws 1969, c. 614, § 1.**  
**72-1214 Repealed. Laws 1969, c. 614, § 1.**  
**72-1215 Repealed. Laws 1969, c. 614, § 1.**  
**72-1216 Repealed. Laws 1969, c. 614, § 1.**  
**72-1217 Repealed. Laws 1969, c. 614, § 1.**  
**72-1218 Repealed. Laws 1969, c. 614, § 1.**  
**72-1219 Repealed. Laws 1969, c. 614, § 1.**  
**72-1220 Repealed. Laws 1969, c. 614, § 1.**  
**72-1221 Repealed. Laws 1969, c. 614, § 1.**  
**72-1222 Repealed. Laws 1969, c. 614, § 1.**  
**72-1223 Repealed. Laws 1969, c. 614, § 1.**  
**72-1224 Repealed. Laws 1969, c. 614, § 1.**  
**72-1225 Repealed. Laws 1969, c. 614, § 1.**  
**72-1226 Repealed. Laws 1969, c. 614, § 1.**  
**72-1227 Repealed. Laws 1969, c. 614, § 1.**

**72-1228 Repealed. Laws 1969, c. 614, § 1.**

**72-1229 Repealed. Laws 1969, c. 614, § 1.**

**72-1230 Repealed. Laws 1969, c. 614, § 1.**

**72-1231 Repealed. Laws 1969, c. 614, § 1.**

**72-1232 Repealed. Laws 1969, c. 614, § 1.**

**72-1233 Repealed. Laws 1969, c. 614, § 1.**

**72-1234 Repealed. Laws 1969, c. 614, § 1.**

**72-1235 Repealed. Laws 1969, c. 614, § 1.**

**72-1236 Repealed. Laws 1969, c. 614, § 1.**

**72-1237 Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.**

The Nebraska Investment Council is created. For purposes of the Nebraska State Funds Investment Act, council means the Nebraska Investment Council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature. The State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and beginning January 1, 2017, the administrator of each retirement system provided for under the Class V School Employees Retirement Act shall serve as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

Each of the appointed members of the council shall serve for a term of five years that begins on January 1 and may be removed by the Governor for cause after notice and an opportunity to be heard. A member may serve until his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to his or her duties as a member of the council.

**Source:** Laws 1969, c. 584, § 1, p. 2350; Laws 1991, LB 368, § 1; Laws 1991, LB 549, § 20; Laws 1996, LB 847, § 18; Laws 2002, LB 407, § 17; Laws 2006, LB 1019, § 7; Laws 2016, LB447, § 2.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**72-1237.01 Repealed. Laws 1997, LB 4, § 6.**

**72-1238 Nebraska Investment Council; members; qualifications.**

(1) Prior to July 1, 2005, the appointed members of the council shall have at least ten years of experience in the financial affairs of a public or private organization or have at least five years of experience in the field of investment management or analysis. For members appointed on or after July 1, 2005, the appointed members of the council shall have at least seven years of experience in the field of investment management or analysis or have at least twelve years

of experience in the financial management of a public or private organization. There is a preference for members who are appointed to have experience in investment management or analysis.

(2) The members serving on July 1, 2005, shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective.

**Source:** Laws 1969, c. 584, § 2, p. 2350; Laws 1996, LB 847, § 19; Laws 2005, LB 503, § 5.

**72-1239 Nebraska Investment Council; purpose; members; meetings; compensation.**

The purpose of the council is to formulate and establish such policies as it may deem necessary and proper which shall govern the methods, practices, and procedures followed by the state investment officer for the investment or reinvestment of state funds and funds described in section 83-133 and the purchase, sale, or exchange of securities as provided by the Nebraska State Funds Investment Act. The council shall meet from time to time as directed by the Governor or the chairperson or as requested by the state investment officer. The members of the council, except the State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and beginning January 1, 2017, each administrator of a retirement system provided for under the Class V School Employees Retirement Act, shall be paid seventy-five dollars per diem. The members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1969, c. 584, § 3, p. 2350; Laws 1981, LB 204, § 145; Laws 1985, LB 335, § 1; Laws 1991, LB 368, § 2; Laws 1996, LB 847, § 20; Laws 1997, LB 4, § 1; Laws 2005, LB 503, § 6; Laws 2016, LB447, § 3.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**72-1239.01 Council; duties and responsibilities.**

(1)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503, the assets of the Nebraska educational savings plan trust created pursuant to sections 85-1801 to 85-1814, the assets of the achieving a better life experience program pursuant to sections 77-1401 to 77-1409, and beginning January 1, 2017, the assets of each retirement system provided for under the Class V School Employees Retirement Act. Except as provided in subsection (4) of this section, the appointed members shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the

retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program solely in the interests of the members and beneficiaries of the retirement systems or the interests of the participants and beneficiaries of the Nebraska educational savings plan trust and the achieving a better life experience program, as the case may be, for the exclusive purposes of providing benefits to members, members' beneficiaries, participants, and participants' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law.

(2)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of state funds. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of state funds and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law.

(3) The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems, the Nebraska educational savings plan trust, the achieving a better life experience program, and state funds so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems, the Nebraska educational savings plan trust, or the achieving a better life experience program shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

(4) Neither the appointed members of the council nor the state investment officer shall be deemed fiduciaries with respect to investments of the assets of a retirement system provided for under the Class V School Employees Retirement Act made by or on behalf of the board of education as defined in section 79-978 or the board of trustees provided for in section 79-980. Neither the council nor any member thereof nor the state investment officer shall be liable for the action or inaction of the board of education or the board of trustees with respect to the investment of the assets of a retirement system provided for under the Class V School Employees Retirement Act, the consequences of any such action or inaction of the board of education or the board of trustees, and any claims, suits, losses, damages, fees, and costs related to such action or inaction or consequences thereof.

**Source:** Laws 1996, LB 847, § 21; Laws 2002, LB 407, § 18; Laws 2003, LB 574, § 25; Laws 2015, LB591, § 11; Laws 2016, LB447, § 4.

**Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

**72-1240 State investment officer; appointment; qualifications; salary; removal.**

The council shall appoint a state investment officer. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The state investment officer shall be a person well qualified by training to administer and invest the money available for investment, and he or she shall have at least five years of experience in the management of investment portfolios. The state investment officer's salary shall be fixed by the council at not less than twenty-five thousand dollars per year. The state investment officer shall serve without term and may be removed for cause by the council.

**Source:** Laws 1969, c. 584, § 4, p. 2350; Laws 1974, LB 396, § 1; Laws 1996, LB 847, § 22; Laws 1997, LB 4, § 2.

**72-1241 State investment officer; deputy; duties; bond or insurance.**

The state investment officer shall devote his or her entire time and attention to the duties of his or her office. The state investment officer shall not engage in any other occupation or profession or hold any other public office, appointive or elective. If for any reason the state investment officer is unable to perform the duties of his or her office, or the office is vacant due to death, resignation, or otherwise, the council shall designate an acting state investment officer to serve until the state investment officer is able to act or the vacancy is filled. With the approval of the council, the state investment officer may designate a deputy to perform such acts and duties as the state investment officer shall authorize, subject to the same restrictions as apply to the state investment officer. The deputy shall be bonded or insured as required by section 11-201. The state investment officer shall be responsible for all official acts of the deputy.

**Source:** Laws 1969, c. 584, § 5, p. 2351; Laws 1971, LB 53, § 6; Laws 1978, LB 653, § 28; Laws 2004, LB 884, § 35.

**72-1242 State investment officer; personnel; employ; approval of Governor; employees; duties; exempted from State Personnel System; when.**

The state investment officer shall employ qualified personnel as may be required to carry out the duties and responsibilities required under the Nebraska State Funds Investment Act. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. At the discretion of the Nebraska Investment Council, investment managers who are employees of the council may be exempted from the State Personnel System. The state investment officer shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties. With the approval of the Governor, the state investment officer may retain counsel, auditors, financial advisors and private consultants on a contract basis or otherwise to render such professional service or advice as he or she may require in the performance of his or her duties.

**Source:** Laws 1969, c. 584, § 6, p. 2351; Laws 1996, LB 847, § 23.

One of the tests of compensability under the Workmen's Compensation Act, in cases related to recreational or social activities, is whether the employer derives substantial direct benefit from the activity. *Kueth v. State*, 191 Neb. 167, 214 N.W.2d 380 (1974).

**72-1243 State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.**

(1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503 and, beginning January 1, 2017, on the assets of each retirement system provided for under the Class V School Employees Retirement Act. By March 31 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee of the Legislature. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By March 31 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

**Source:** Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7; Laws 2011, LB509, § 14; Laws 2016, LB447, § 5.

**Cross References**

Class V School Employees Retirement Act, see section 79-978.01.

**72-1244 State Treasurer; boards, commissions, departments, and agencies; money to invest; notify state investment officer; conditions.**

The State Treasurer shall notify the state investment officer as to the amount of money in the General Fund and the funds of any board, commission, department, agency, or official charged with the control of any other state fund not currently needed and available for investment. When it shall appear to the State Treasurer that any such invested money is needed, he or she shall notify the state investment officer who shall make available from the pooled investments the amount required.

**Source:** Laws 1969, c. 584, § 8, p. 2351; Laws 1985, LB 335, § 3; Laws 2003, LB 149, § 1.

**72-1245 Repealed. Laws 1971, LB 152, § 7.**

**72-1246 State investment officer; investments; duties.**

The state investment officer shall invest in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special



skills or is named on the basis of representations of special skills or expertise, he or she is under a duty to use such skills, subject to the direction of the Nebraska Investment Council.

**Source:** Laws 1969, c. 584, § 10, p. 2352; Laws 1971, LB 152, § 1; Laws 1974, LB 396, § 2; Laws 1981, LB 460, § 1; Laws 2002, LB 407, § 19.

**72-1246.01 Student loans; purchase.**

The Nebraska Investment Council, out of funds available to it, upon the application of any qualified lending agent as defined under the Federal Higher Education Act of 1965, may purchase all student loans which are federally guaranteed, as to principal and interest, and made to Nebraska residents attending Nebraska institutions, which are offered to the Nebraska Investment Council for purchase and shall give preference to such loans when an investment in such loans would be equally as good as any other investment; *Provided*, such offers shall be in amounts of five thousand dollars or more from a single lending agent.

**Source:** Laws 1971, LB 152, § 2.

**72-1246.02 Student loans; sale; resale; conditions.**

The Nebraska Investment Council may hold such loans or offer them for sale or resale on such terms and conditions as shall be negotiated with purchasers. Conditions of such sale or resale may be, but shall not be limited to, amounts to be retained for service, degree of servicing requirements, conditions of repurchase and responsibility for collection and reports to the guaranteeing agency of the federal government.

**Source:** Laws 1971, LB 152, § 3.

**72-1246.03 Student loans; Nebraska State Colleges; service loans; security.**

The Nebraska Investment Council may negotiate with the Board of Trustees of the Nebraska State Colleges for the servicing of such loans which may be purchased by the council, retained in its investment portfolio or resold as provided in section 72-1246.02. The council may require such security for the performance of the servicing duties as it may deem necessary to insure full compliance with a servicing agreement.

**Source:** Laws 1971, LB 152, § 4.

**72-1246.04 Student loans; purchasing, selling, servicing; approval.**

The Nebraska Investment Council shall obtain the approval of the United States Department of Education before purchasing, selling, or servicing loans pursuant to sections 72-1246.01 to 72-1246.03.

**Source:** Laws 1971, LB 152, § 5; Laws 1991, LB 2, § 15.

**72-1246.05 Student loans; priority; liquidation of investments; prior investments, how treated; interest.**

The Nebraska Investment Council may give priority to the investments authorized by section 72-1246.01 and shall liquidate other investments if necessary to meet the demand for such loans; *Provided*, that any investments made prior to May 24, 1971, may be retained in kind, notwithstanding the

provisions of section 72-1246, until such time as in the discretion of the Nebraska Investment Council the same may be sold for the best advantage of the retirement fund. All interest received on such loans shall be credited to the fund from which the loan was made.

**Source:** Laws 1971, LB 152, § 6.

**72-1246.06 Repealed. Laws 2011, LB 303, § 1.**

**72-1246.07 Repealed. Laws 2011, LB 303, § 1.**

**72-1246.08 Repealed. Laws 2011, LB 303, § 1.**

**72-1247 Repealed. Laws 2002, LB 407, § 67.**

**72-1248 Income from investments; disbursement.**

Interest, premium, and other income received from investments pursuant to sections 72-1244 and 72-1267 shall be credited to the fund from which the investment was made except as otherwise provided by law.

**Source:** Laws 1969, c. 584, § 12, p. 2354; Laws 2003, LB 149, § 2.

**72-1249 Expenses; costs; how paid.**

(1) Any expenses with respect to the purchase, sale, or exchange of any security shall be charged to the fund or funds on behalf of which such purchase, sale, or exchange was made. All other expenses of the state investment officer shall be paid out of appropriations for the office of the state investment officer.

(2) Beginning on March 31, 2016, any expenses with respect to the transfer to and assumption by the council and the state investment officer of the duty and authority to invest the assets of a retirement system provided for under the Class V School Employees Retirement Act shall be charged to the Class V School Employees Retirement Fund established in section 79-9,115. Such expenses shall be paid without the approval of the board of education as defined in section 79-978 or the board of trustees provided for in section 79-980.

(3) Management, custodial, and service costs which are a direct expense of investing the assets of a retirement system provided for under the Class V School Employees Retirement Act may be paid from the income of such assets when it is not prohibited by statute or the Constitution of Nebraska. For purposes of this section, management, custodial, and service costs include investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the council and the state investment officer.

**Source:** Laws 1969, c. 584, § 13, p. 2354; Laws 1972, LB 1279, § 1; Laws 1977, LB 364, § 1; Laws 2016, LB447, § 6; Laws 2017, LB29, § 1.

**Cross References**

**Class V School Employees Retirement Act**, see section 79-978.01.

**72-1249.01 Repealed. Laws 1977, LB 364, § 2.**

**72-1249.02 State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.**

The State Investment Officer's Cash Fund is created. A pro rata share of the budget appropriated for the council shall be charged to the income of each fund managed, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the agencies and boards administering these funds shall not be required.

It is the intent of this section to have funds managed by the state investment officer pay a pro rata share of the investment management expense when this is not prohibited by statute or the constitution.

Management, custodial, and service costs which are a direct expense of state funds may be paid from the income of such funds when this is not prohibited by statute or the Constitution of Nebraska. For purposes of this section, management, custodial, and service costs shall include, but not be limited to, investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the council and the state investment officer.

Beginning on March 31, 2016, a pro rata share of the budget appropriated for the council shall be charged to the income of the Class V School Employees Retirement Fund, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges among a retirement system provided for under the Class V School Employees Retirement Act and the other funds managed by the council may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the board of education as defined in section 79-978 and the board of trustees provided for in section 79-980 shall not be required.

**Source:** Laws 1983, LB 468, § 1; Laws 1987, LB 31, § 2; Laws 1987, LB 786, § 1; Laws 2002, LB 407, § 20; Laws 2016, LB447, § 7.

#### Cross References

**Class V School Employees Retirement Act**, see section 79-978.01.

This section authorizes an investment officer to enter into contracts for investment management services. *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006).

#### **72-1250 Securities in custody of State Treasurer; held in name of nominee; registered nominee; selection.**

All securities purchased or held shall be in the custody of the State Treasurer who may deposit with a fiscal agent in any financial institution, approved by the Nebraska Investment Council, such securities as he shall consider advisable to be held in safekeeping by such agent for collection of principal and interest, or of the proceeds of sale thereof or, at the direction of the state investment officer, the State Treasurer shall have such securities held in the name of a nominee. The State Treasurer shall join with the deputy state treasurer in obtaining for the State of Nebraska a registered nominee from the American Society of Corporate Secretaries and shall hold securities registered in the nominee's name in the same manner as he shall consider appropriate for holding other securities.

**Source:** Laws 1969, c. 584, § 14, p. 2354; Laws 1974, LB 925, § 1.

#### **72-1250.01 Cash funds deposited with fiscal agent; constitute investment made by state investment officer.**

Whenever cash funds belonging to the State of Nebraska shall be deposited with any fiscal agent authorized by section 72-1250, the holding thereof shall be and constitute an investment made pursuant to direction of the state investment officer for purposes of subdivision (8) of section 84-602.

**Source:** Laws 1974, LB 925, § 2.

**Cross References**

State Treasurer, duties, see section 84-602.

**72-1251 State Treasurer; interest, premium, income, and principal; collect.**

The State Treasurer shall collect the interest, premium or other income on and the principal of such securities in his custody as the same become due and payable.

**Source:** Laws 1969, c. 584, § 15, p. 2355.

**72-1252 State investment officer; earned income; notice.**

The available money from the General Fund and each board, commission, department, agency, or official charged with the control of any other state funds shall be invested by the state investment officer. On a monthly basis the state investment officer shall notify the Department of Administrative Services and the State Treasurer as to the earned income to be credited pursuant to section 72-1248.

**Source:** Laws 1969, c. 584, § 16, p. 2355; Laws 2003, LB 149, § 3.

**72-1253 Repealed. Laws 2003, LB 149, § 8.**

**72-1254 State investment officer; operations; report; contents; public inspection.**

The state investment officer shall report no later than fifteen days after the close of each month to the Governor, the State Treasurer, the Auditor of Public Accounts, the Department of Administrative Services, and the members of the council on the operations for the pooled accounts during such month. The report shall include a summary of investments, purchases, and dealers utilized. Such reports shall be available for public inspection in the office of the state investment officer.

**Source:** Laws 1969, c. 584, § 18, p. 2355; Laws 2003, LB 149, § 4.

**72-1255 Investment transactions; Auditor of Public Accounts; postaudits; report.**

The Auditor of Public Accounts shall conduct, at such time as he or she determines necessary, postaudits of the investment transactions provided for in the Nebraska State Funds Investment Act and shall submit annually a report of his or her findings to the Governor and the state investment officer.

**Source:** Laws 1969, c. 584, § 19, p. 2355; Laws 1997, LB 4, § 4; Laws 2011, LB337, § 5.

**72-1256 Repealed. Laws 1981, LB 545, § 52.**

**72-1257 Default; proceedings.**

In the event of default in the payment of principal of, or interest on, any investment made by the state investment officer, the State Treasurer may institute the proper proceedings to collect such matured principal or interest, and may, with the approval of the state investment officer, accept for exchange purposes refunding bonds or other evidences of indebtedness. The State Treasurer, with the approval of the state investment officer, may make such compromise, adjustment, or other disposition of the past-due interest or principal in default, or make such compromises, adjustments or other disposition as to future payments of interest or principal as deemed advisable to protect the money invested.

**Source:** Laws 1969, c. 584, § 21, p. 2355.

**72-1258 Investment of state funds; boards, commissions, departments, agencies, officials; powers and duties.**

Except as otherwise provided in sections 72-1244 and 72-1267, each board, commission, department, agency, or official that previously was charged with the investment of state funds shall continue in all other respects as provided by law and shall continue to have all other powers and shall exercise all the functions and duties fixed or imposed upon it by law.

**Source:** Laws 1969, c. 584, § 22, p. 2356; Laws 2003, LB 149, § 5.

**72-1259 State investment officer; political subdivisions; assistance; fee.**

The state investment officer may provide assistance and furnish advice regarding the investment of money to any political subdivision of the State of Nebraska whenever such advice is requested by a political subdivision. In connection with the rendering of such service, the state investment officer may charge and collect any fee he determines to be reasonable.

**Source:** Laws 1969, c. 584, § 23, p. 2356.

**72-1260 Act, how cited.**

Sections 72-1237 to 72-1260 shall be known and may be cited as the Nebraska State Funds Investment Act.

**Source:** Laws 1969, c. 584, § 132, p. 2432; Laws 1994, LB 1066, § 74; Laws 1996, LB 847, § 25.

(b) NEBRASKA CAPITAL EXPANSION ACT

**72-1261 Declaration of intent.**

It is hereby declared that the lending of money is an activity which affects the economic conditions of the State of Nebraska, that Nebraska is a state short of sufficient capital to properly serve the needs of the state, especially the agricultural credit requirements and housing credit requirements, and that if additional funds are deposited into the commercial banking channels and capital stock financial institution or qualifying mutual financial institution channels the available capital will increase many times the amount of the initial deposit.

**Source:** Laws 1978, LB 258, § 1; Laws 2003, LB 175, § 2.

**72-1262 Terms, defined.**

For purposes of the Nebraska Capital Expansion Act, unless the context otherwise requires:

(1) Bank means a 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;

(2) 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, or 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;

(3) Time deposit open account means a bank account or a deposit with a capital stock financial institution or a qualifying mutual financial institution with respect to which there is in force a written contract which provides that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which date shall be not less than thirty days after the date of the deposit, or prior to the expiration of the period of notice which shall be given by the state investment officer in writing not less than thirty days in advance of withdrawal. The time deposit open account contract shall be uniform and shall be furnished by the state investment officer to each bank, capital stock financial institution, or qualifying mutual financial institution for execution;

(4) Funds available for investment means all funds over which the state investment officer has investment jurisdiction less those funds necessary for operations and except those funds which are eligible for long-term investment; and

(5) Qualifying mutual financial institution has the same meaning as in section 77-2365.01.

**Source:** Laws 1978, LB 258, § 2; Laws 1985, LB 614, § 1; Laws 1992, LB 757, § 23; Laws 1997, LB 275, § 1; Laws 2002, LB 957, § 25; Laws 2003, LB 175, § 3; Laws 2004, LB 999, § 43.

**72-1263 State investment officer; time deposit open account; conditions.**

Except as provided in section 72-1264, the state investment officer shall, out of funds available for investment, initially cause to be offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions in this state a time deposit open account in the amount of one million dollars, except that the minimum amount that any bank, capital stock financial institution, or qualifying mutual financial institution may accept is the amount of one hundred thousand dollars. Such deposit shall be available at any investment date to such banks, capital stock financial institutions, or qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. To the extent that the total amount of funds initially offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions is not accepted by such banks, capital stock financial

institutions, and qualifying mutual financial institutions, the balance of such funds shall be immediately reoffered to any banks, capital stock financial institutions, and qualifying mutual financial institutions desiring additional funds in an amount not to exceed each bank's, capital stock financial institution's, or qualifying mutual financial institution's pro rata share of the remaining funds, or fifteen million dollars for each bank, capital stock financial institution, or qualifying mutual financial institution, whichever is less. The reoffered funds shall be made available to such banks, capital stock financial institutions, and qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank, capital stock financial institution, or qualifying mutual financial institution may receive for deposit a sum of more than sixteen million dollars.

**Source:** Laws 1978, LB 258, § 3; Laws 1985, LB 614, § 2; Laws 1990, LB 1146, § 3; Laws 2000, LB 932, § 35; Laws 2002, LB 957, § 26; Laws 2003, LB 175, § 4; Laws 2014, LB759, § 20; Laws 2017, LB94, § 1.

**72-1264 Funds; when offered; time deposit open account; state investment officer; powers.**

Funds shall be offered for deposit as they become available. The time of such deposit shall be known as an investment date. The state investment officer may make prudent interim investments. If the funds available for investment are less than the amount required for banks, capital stock financial institutions, or qualifying mutual financial institutions under section 72-1263, the state investment officer shall prorate the available funds among the desiring banks, capital stock financial institutions, or qualifying mutual financial institutions.

**Source:** Laws 1978, LB 258, § 4; Laws 2000, LB 932, § 36; Laws 2002, LB 957, § 27; Laws 2003, LB 175, § 5.

**72-1265 State investment officer; deposits; fix interest rate and term; legislative intent.**

The state investment officer shall fix the rate of interest to be paid on deposits and the term of deposits to be offered on the first day of each month. The rate per annum for each period shall be equal to the interest rate paid for other qualified investments of equal term available for investment by the state investment officer. It is the Legislature's intent that the state receive a competitive rate from Nebraska banks, capital stock financial institutions, and qualifying mutual financial institutions, but that rates received should not exceed the rates that would be paid for other qualified investments.

**Source:** Laws 1978, LB 258, § 5; Laws 2003, LB 175, § 6.

**72-1266 Nebraska Investment Council; adopt rules and regulations.**

The Nebraska Investment Council shall adopt and promulgate rules and regulations to establish procedures for the distribution of funds to banks, capital stock financial institutions, and qualifying mutual financial institutions.

**Source:** Laws 1978, LB 258, § 6; Laws 2002, LB 957, § 28; Laws 2003, LB 175, § 7.

**72-1267 State investment officer; combine and pool investable funds; when; prorate interest.**

For purposes of investment under the Nebraska Capital Expansion Act, the state investment officer shall combine and pool all investable funds of all state agencies subject to his or her investment powers except when doing so would violate a fiduciary obligation of the state. The interest earned on any pooled investment shall be prorated in accordance with the participation of the respective funds.

**Source:** Laws 1978, LB 258, § 7; Laws 1985, LB 614, § 3.

**72-1268 Depositories; eligibility for funds; bond or bond alternatives.**

(1) Notwithstanding any other provision of law, every bank, capital stock financial institution, and qualifying mutual financial institution shall be eligible for the maximum investment provided for in section 72-1263. The bank, capital stock financial institution, or qualifying mutual financial institution shall give a bond or, in lieu of a bond, may give security for any investment under the Nebraska Capital Expansion Act as provided in sections 72-1268.01 to 72-1268.04. Any bank, capital stock financial institution, or qualifying mutual financial institution may apply for the privilege of keeping on deposit such funds.

(2)(a) Every bank, capital stock financial institution, and qualifying mutual financial institution shall, as a condition of accepting state funds, agree to cash free of charge state warrants which are presented by payees of the state without regard to whether or not such payee has an account with such bank, capital stock financial institution, or qualifying mutual financial institution, and such bank, capital stock financial institution, or qualifying mutual financial institution shall not require such payee to place his or her fingerprint or thumbprint on the state warrant as a condition to cashing such warrant.

(b) The condition of accepting state funds in subdivision (2)(a) of this section shall not preclude any bank, capital stock financial institution, or qualifying mutual financial institution from refusing to cash a state warrant presented to the bank, capital stock financial institution, or qualifying mutual financial institution if (i) a stop-payment order has been placed on the state warrant, (ii) the state warrant has been reported as unregistered, voided, lost, stolen, or destroyed or a duplicate state warrant has been issued in its place, (iii) the state warrant is incomplete or is forged or altered in any manner, (iv) the state warrant lacks any necessary indorsement or an indorsement is illegible, unauthorized, or forged, (v) the state warrant is stale-dated, or (vi) the bank, capital stock financial institution, or qualifying mutual financial institution has a reasonable belief that the individual presenting the state warrant is not the payee named on the state warrant.

**Source:** Laws 1978, LB 258, § 8; Laws 1985, LB 614, § 4; Laws 1996, LB 1274, § 24; Laws 1999, LB 217, § 1; Laws 2003, LB 175, § 8.

**72-1268.01 Funds deposited; bond; requirements.**

For the security of funds deposited under the Nebraska Capital Expansion Act, the state investment officer shall require all such depositories to give bond for the safekeeping of payments of such deposits. The officers of the bank, capital stock financial institution, or qualifying mutual financial institution seeking to qualify as a depository shall be ineligible to sign the bond provided



for under this section. The bond shall run to the people of the State of Nebraska and shall be approved by the Governor, Secretary of State, and Attorney General. No bond shall be valid unless approved by all three of such officers. The bond shall be conditioned (1) that the depository at the end of each and every month render to the state investment officer a statement in duplicate showing the daily balance and the amount of money of the state held by it during the month, (2) for the payment of the deposit when demanded by the state investment officer on his or her check at any time, and (3) generally to do and perform whatever may be required by the Nebraska Capital Expansion Act and a faithful discharge of the trust reposed in such depository.

**Source:** Laws 1985, LB 614, § 6; Laws 2003, LB 175, § 9.

**72-1268.02 Bond; form.**

The bond referred to in section 72-1268.01 shall be in substance as follows:

Know all Persons by these Presents, That we ..... as principals, and ..... as sureties, are held and firmly bound unto the State of Nebraska, in the just and full sum of ..... Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Dated the ..... day of ..... A.D. ....

Whereas, such bank, capital stock financial institution, or qualifying mutual financial institution, in consideration of the deposit of certain of the money of the State of Nebraska for safekeeping with and in the ..... bank, capital stock financial institution, or qualifying mutual financial institution of ..... the amount whereof shall be subject to withdrawal or diminution by the state investment officer as the requirements of the state shall demand, and which amount may be increased or decreased as the state investment officer may determine.

Now, Therefor, if such ..... bank, capital stock financial institution, or qualifying mutual financial institution of ..... shall at the end of every month render to the state investment officer a statement in duplicate showing the daily balance of the state money held by it during the month next preceding, and how the same has been credited, and shall well and truly keep all such sums of money so deposited or to be deposited as aforesaid subject to the check and order of the state investment officer as aforesaid, and shall pay over the same, and each and every part thereof, upon the written demand of the state investment officer, and to his or her successor in office as shall be by him or her demanded, and shall in all respects save and keep the people of the State of Nebraska and the state investment officer harmless and indemnified for and by reason of the making of such deposit or deposits, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

**Source:** Laws 1985, LB 614, § 7; Laws 2003, LB 175, § 10.

**72-1268.03 State investment officer; limitation on deposits.**

The state investment officer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial

institution or in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution. All bonds of such depositories shall be deposited with and held by the state investment officer.

**Source:** Laws 1985, LB 614, § 8; Laws 1992, LB 757, § 24; Laws 2002, LB 957, § 29; Laws 2003, LB 175, § 11; Laws 2009, LB259, § 13.

**72-1268.04 Depository; bond alternatives; requirements.**

In lieu of the bond required by section 72-1268.01, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under the Nebraska Capital Expansion Act may give security as provided in the Public Funds Deposit Security Act to the state investment officer.

**Source:** Laws 1985, LB 614, § 9; Laws 1989, LB 33, § 30; Laws 1989, LB 377, § 11; Laws 1996, LB 1274, § 25; Laws 2003, LB 175, § 12.

**Cross References**

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

**72-1268.05 Repealed. Laws 1996, LB 1274, § 57.**

**72-1268.06 Repealed. Laws 1996, LB 1274, § 57.**

**72-1268.07 Subsidiary bank of out-of-state bank holding company; filing required; deposit of public funds; restriction; applicability and construction of section.**

(1) Each subsidiary bank of an out-of-state bank holding company shall file with the state investment officer a copy of the public section of the subsidiary bank's most current written evaluation issued pursuant to the terms of section 807 of the Community Reinvestment Act of 1977, as amended, 12 U.S.C. 2906. The copy shall be filed with the state investment officer within thirty days of receipt of the evaluation from the subsidiary bank's primary appropriate federal financial supervisory agency.

(2) On and after January 1, 1992, the state investment officer shall not further deposit or redeposit public funds as authorized by section 72-1263 in any subsidiary bank of an out-of-state bank holding company which has been assigned, by its primary appropriate federal financial supervisory agency, a rating of substantial noncompliance in meeting community credit needs. Upon the filing with the state investment officer of a copy of an updated written evaluation which reflects that the subsidiary bank is no longer assigned such rating, the subsidiary bank shall immediately be eligible for further deposit or redeposit of public funds as authorized by such section.

(3) For purposes of this section, bank holding company shall have the meaning provided in 12 U.S.C. 1841 as it exists on April 7, 1990, and appropriate federal financial supervisory agency shall have the meaning provided in 12 U.S.C. 2902 as it exists on such date.

(4) This section shall not apply to any subsidiary bank of an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which on March 12, 1963, owned at least two banks in this state.

(5) This section shall not be construed or interpreted in any manner to be a condition precedent to the acquisition or control of a bank in this state by an out-of-state bank or out-of-state bank holding company.

**Source:** Laws 1990, LB 1146, § 2.

**72-1269 Act, how cited.**

Sections 72-1261 to 72-1269 shall be known and may be cited as the Nebraska Capital Expansion Act.

**Source:** Laws 1978, LB 258, § 9; Laws 1985, LB 614, § 5; Laws 1990, LB 1146, § 4.

(c) SOUTH AFRICAN INVESTMENTS

**72-1270 Repealed. Laws 1994, LB 1066, § 149.**

**72-1271 Repealed. Laws 1994, LB 1066, § 149.**

**72-1272 Repealed. Laws 1994, LB 1066, § 149.**

**72-1273 Repealed. Laws 1994, LB 1066, § 149.**

**72-1274 Repealed. Laws 1994, LB 1066, § 149.**

**72-1275 Repealed. Laws 1994, LB 1066, § 149.**

**72-1276 Repealed. Laws 1994, LB 1066, § 149.**

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

**72-1277 Legislative findings.**

The Legislature finds that:

(1) The Nebraska Investment Council was created by the Legislature in Laws 1967, LB 335. Additional legislation was passed in Laws 1969, LB 1345, which provided for centralization of the investment of state funds and addressed types of authorized investments and since then the statutory framework of the council has been modified periodically by the Legislature;

(2) The laws of Nebraska provide that the appointed members of the council and the state investment officer are deemed fiduciaries with respect to investment of the assets (a) in the retirement systems and the Nebraska educational savings plan trust and as fiduciaries are required to discharge their duties with respect to such assets solely in the best interest of the members and beneficiaries of such plans and (b) of other state funds solely in the best interest of the residents of Nebraska;

(3) As fiduciaries, the appointed members of the council and the officer must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims by diversifying the investments of assets in the various plans so as to minimize the risk of large losses;

(4) The council managed over fifteen billion three hundred million dollars of assets as of September 30, 2007. Those assets have quadrupled since 1995. The assets managed by the council produced almost one billion five hundred million

dollars in investment earnings in 2006 and almost seven billion dollars of investment earnings since December 31, 1995;

(5) The council has the responsibility of the management of portfolios for over thirty state entities. The financial markets and investment strategies that must be employed to achieve satisfactory returns have become more complex and the best practices of similar state government investment agencies have evolved since the creation of the council; and

(6) Pursuant to section 72-1249.02, the operating costs of the council are charged to the income of each fund managed by the council, and such charges are transferred to the State Investment Officer's Cash Fund. Management, custodial, and service costs that are a direct expense of state funds are paid from the income of such funds.

**Source:** Laws 2008, LB1147, § 17.

**72-1278 Nebraska Investment Council; comprehensive review of council; contract.**

The Nebraska Investment Council shall enter into a contract with a qualified independent organization familiar with similar state investment offices to complete a comprehensive review of the current statutory, regulatory, and organizational situation of the council, review best practices of similar state investment offices, and make recommendations to the council, the Governor, and the Legislature for changes needed to ensure that the council has adequate authority to independently execute its fiduciary responsibilities to the members and beneficiaries of the retirement systems and the Nebraska educational savings plan trust and the residents of Nebraska with regards to other state funds. The recommendations submitted to the Legislature shall be submitted electronically.

**Source:** Laws 2008, LB1147, § 18; Laws 2012, LB782, § 131.

**ARTICLE 13**

**PUBLICLY OWNED LANDS**

(a) PUBLICLY OWNED FARM LANDS

Section

- 72-1301. Farm land, defined; nonfarm land; designation.
- 72-1302. Leases; required.
- 72-1303. Capital improvements; prohibited; exceptions.
- 72-1304. Lease; cash rent; term; rules and regulations; cancellation of lease.
- 72-1305. Application for lease; affidavit; contents; deposit for rental; sealed bids; when.

(b) VIRGIN PRAIRIE

- 72-1306. Virgin prairie; legislative findings.
- 72-1307. Virgin prairie; preservation; sale; conditions.
- 72-1308. Virgin prairie; sale; when allowed.

(a) PUBLICLY OWNED FARM LANDS

**72-1301 Farm land, defined; nonfarm land; designation.**

As used in sections 72-1301 to 72-1305, unless the context otherwise requires, farm land shall mean land suitable for cultivation or grazing and devoted primarily to such purposes for a profit. Land suitable for cultivation or grazing acquired or owned by any entity of the state and devoted primarily to other public uses may administratively be designated as nonfarm land.

**Source:** Laws 1967, c. 461, § 1, p. 1431.

**72-1302 Leases; required.**

All departments, boards, and commissions of the State of Nebraska, except the Board of Educational Lands and Funds, the Department of Correctional Services, the Department of Health and Human Services, and the University of Nebraska shall cease operating any farm lands except as landlords under written leases by March 1, 1968, as provided in sections 72-1304 and 72-1305.

**Source:** Laws 1967, c. 461, § 2, p. 1431; Laws 1973, LB 563, § 12; Laws 1996, LB 1044, § 788.

**Cross References**

Purpose of sections 72-1302 to 72-1304, see section 83-901.

**72-1303 Capital improvements; prohibited; exceptions.**

No capital improvements shall be made to any farm land owned by the State of Nebraska, its departments, boards or commissions, except that this provision shall not apply to the Board of Educational Lands and Funds, the Department of Correctional Services, the Department of Health and Human Services, or the University of Nebraska or projects where the only purpose of the capital improvement would be soil and water conservation.

**Source:** Laws 1967, c. 461, § 3, p. 1431; Laws 1973, LB 563, § 13; Laws 1996, LB 1044, § 789.

**72-1304 Lease; cash rent; term; rules and regulations; cancellation of lease.**

All publicly owned farm lands not classified as school or saline lands, or lands of the Department of Health and Human Services, the Department of Correctional Services, or the University of Nebraska shall be subject to lease at a fixed annual cash rental for a term of not more than ten years. The department, commission, or board shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of such lands and to prescribe such terms and conditions of the lease as it shall deem necessary to protect the interests of the state. All departments, boards, or commissions, the Department of Health and Human Services, the Department of Correctional Services, and the University of Nebraska shall adopt and enforce a soil conservation program based on a conservation plan as developed by the local natural resources district. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry out soil conservation requirements as provided in the rules and regulations of the department, commission, or board shall be cause for cancellation of the lease.

**Source:** Laws 1967, c. 461, § 4, p. 1432; Laws 1969, c. 597, § 1, p. 2451; Laws 1973, LB 563, § 14; Laws 1996, LB 1044, § 790.

**72-1305 Application for lease; affidavit; contents; deposit for rental; sealed bids; when.**

Applications to lease any such publicly owned farm lands shall be made to the department, commission, or board having charge thereof. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit, that the applicant will not sublease or otherwise dispose of the same without the written approval of the department, commission, or board, and will commit no waste or damage on the land nor permit others to do so. If two or more applicants apply to lease

the same land, the department, commission, or board having charge of the same shall grant the lease to the applicant who, after investigation or hearing, appears to have the best qualifications according to the rules and regulations of such department, commission, or board; *Provided*, that the order of the filing of the application shall be given no consideration in the granting of such lease. Each application shall be accompanied by the amount due as rental for the first year for which the application is made. If, after due diligence and effort to lease such land upon application, the department, commission, or board is unable to lease part or all of the same according to its rules and regulations, it may at a stated time and after due notice receive sealed bids on a fixed cash rental basis and lease such land on the highest offer if, in the judgment of such department, commission, or board, it is for the best interest of the state to accept such bid.

**Source:** Laws 1967, c. 461, § 5, p. 1432; Laws 1969, c. 597, § 2, p. 2451.

(b) VIRGIN PRAIRIE

**72-1306 Virgin prairie; legislative findings.**

The Legislature finds that:

- (1) Examples of Nebraska's prairie soil in a condition which existed before the state was settled during the early part of the nineteenth century are becoming increasingly rare;
- (2) Such virgin prairie is an important tool for scientists who seek to determine the highest and best use of Nebraska's soil resources;
- (3) Such virgin prairie is an important part of botanical and zoological studies offered by institutions of learning in this state; and
- (4) It is in the public interest that such virgin prairie which has been used as an educational tool by an educational institution of this state in suitable quantities be preserved and protected.

**Source:** Laws 1981, LB 58, § 1.

**72-1307 Virgin prairie; preservation; sale; conditions.**

When any agency or political subdivision of the State of Nebraska, except the Board of Educational Lands and Funds, owns land with virgin prairie as described in section 72-1306, such agency or political subdivision may take action to establish the location and boundaries of such virgin prairie or a part thereof that may be preserved and protected. Such action shall be taken only after holding a public hearing with at least one week's advance notice of such hearing in a newspaper of general circulation in the county where the virgin prairie is located. Any such agency or political subdivision which has established the location and boundaries of such virgin prairie and which decides to sell such land may require the purchaser to enter into a covenant to continue to preserve and protect the area established as virgin prairie, and such covenant by its terms shall run with the title to the land binding future owners. In the event such covenant to preserve and protect the area as virgin prairie should lapse or be declared invalid or unconstitutional by any court of competent jurisdiction, the agency or political subdivision which sold the land or its successor in interest shall be afforded first option to repurchase the land, at the

current market value to be determined as if the covenant were valid and enforceable.

**Source:** Laws 1981, LB 58, § 2.

**72-1308 Virgin prairie; sale; when allowed.**

No sale authorized under sections 72-1306 to 72-1308 shall take place after July 1, 1983.

**Source:** Laws 1981, LB 58, § 3.

**ARTICLE 14**

**STATE OFFICE BUILDING**

**Cross References**

**State office building**, conveyance by city of Lincoln, see section 81-1108.37.

**Section**

- 72-1401. Purpose of sections.
- 72-1402. Municipality, defined.
- 72-1403. Municipality; powers; bonds; liability; agreements; limitations; sections, how construed.
- 72-1404. Municipality; state; agreement; Governor; approval.
- 72-1405. Municipality; state; agreement; contents.
- 72-1406. Municipality; state; agreement; condition precedent; appropriation by Legislature; failure to appropriate; effect.
- 72-1407. Actions by state; liability; sections, how construed.
- 72-1408. Municipality; state; joint facility; agreement authorized.
- 72-1409. State of Nebraska; power to lease or sublease.
- 72-1410. Municipality; state; agreement; provisions.
- 72-1411. Municipality; power to lease.
- 72-1412. Political subdivision; power to lease; with whom; when.
- 72-1413. Repealed. Laws 1976, LB 1006, § 10.
- 72-1414. Repealed. Laws 1976, LB 1006, § 10.
- 72-1415. Repealed. Laws 1976, LB 1006, § 10.
- 72-1416. Repealed. Laws 1976, LB 1006, § 10.

**72-1401 Purpose of sections.**

The purposes of sections 72-1401 to 72-1408 are (1) to permit the state and cities, villages, and counties to make the most efficient use of their powers by enabling them to cooperate with each other in providing services and facilities, and (2) to permit cities, villages, and counties to assist the state by making available to the state, at no greater cost to the state than the cost thereof to the municipality, buildings and facilities, or portions thereof, thereby enabling the state better to serve the inhabitants of such cities, villages, and counties and the surrounding region thereof or better to serve the public of the state at large.

**Source:** Laws 1967, c. 464, § 1, p. 1435; Laws 1974, LB 914, § 5.

**72-1402 Municipality, defined.**

For the purposes of sections 72-1401 to 72-1408 municipality shall mean any city, village, or county of this state.

**Source:** Laws 1967, c. 464, § 2, p. 1435; Laws 1974, LB 914, § 6.

**72-1403 Municipality; powers; bonds; liability; agreements; limitations; sections, how construed.**

Any municipality is hereby authorized and empowered:

(1) To supply or make available to the state buildings or portions thereof or other facilities or parts thereof in such municipality or the zoning area authorized by law for the municipality for use either in whole or in part by the state, which buildings or facilities may be either existing buildings or existing facilities or buildings and facilities to be constructed or acquired by such municipality;

(2) To acquire, construct, reconstruct, improve, extend, equip, or furnish in such municipality or the zoning area authorized by law for the municipality any building or facility for the purposes of making the same available in whole or in part to the state;

(3) To operate and maintain any building or facility made available in whole or in part to the state;

(4) To appropriate funds for any cost incurred by the municipality in acquiring, constructing, reconstructing, improving, extending, equipping, or furnishing any such building or facility or incurred in the operation and maintenance thereof;

(5) In order to finance any costs of acquisition, construction, reconstruction, improvement, extension, equipping, or furnishing any such building or facility, to issue its general obligation bonds in the manner and pursuant to the procedures as are otherwise provided by law, or in anticipation of the receipt by such municipality of any payments to be made by the state to such municipality for the supplying by the municipality to the state of such building or facility, or portions thereof, or in anticipation of the receipt of any other revenue with respect to the building or facility, including donations, to issue its revenue bonds in the manner and pursuant to the procedures as are otherwise provided by law and to secure such revenue bonds by a pledge of any or all of the revenue or other money to be derived by the municipality from its ownership or operation of such building or facility, including any payments to be made to such municipality by the state for the use by the state of such building or facility, or donations made for or with respect to such building or facility, which building or facility shall constitute and be deemed to be a revenue-producing facility of such municipality and which revenue bonds shall not impose any general liability upon the municipality. Any city having a home rule charter may, in the discretion of the governing body of such city, issue such general obligation bonds or revenue bonds either in the manner and pursuant to such procedures as are provided by state statutes or in the manner and pursuant to such procedures as are provided by such home rule charter; and

(6) To enter into an agreement with the state provided by the provisions of section 72-1405, which agreement shall be approved by the governing body of such municipality by ordinance, resolution, or otherwise before such agreement shall enter into force.

The issuance of bonds by a municipality as provided in this section shall not create or impose any liability on the state, whether such bonds be general obligation bonds or revenue bonds of such municipality, and the state shall not be indebted thereon. Any such bond issued by a municipality shall recite therein in substance that such bond is solely the obligation of the municipality issuing the same and is not an obligation of the State of Nebraska nor a debt of the State of Nebraska within the meaning of any constitutional or statutory limitation upon the creation of indebtedness of the State of Nebraska and that the



State of Nebraska is not, and in no event shall be, liable for the payment thereof or interest thereon.

In the event that the municipality is a party to an agreement entered into under the provisions of section 13-804 or 13-2504, such municipality may enter into an agreement with the state pursuant to the provisions of sections 72-1401 to 72-1408 whereby the municipality may supply or make available to the state all or a portion of that part or that use of the building or facility to which the municipality is entitled under the agreement entered into under the provisions of section 13-804 or 13-2504, but the municipality may enter into such an agreement with the state only if the terms and provisions thereof and the carrying out of such provisions does not violate the agreement of the municipality entered into under the provisions of section 13-804 or 13-2504.

Neither sections 72-1401 to 72-1408 nor anything contained therein shall be construed as a reduction or limitation upon any powers which a municipality might otherwise have under law or charter, but shall be construed as cumulative, and the powers granted to a municipality herein shall be in addition to any other powers which it might now have.

**Source:** Laws 1967, c. 464, § 3, p. 1435; Laws 1976, LB 1006, § 5; Laws 1999, LB 87, § 83.

**72-1404 Municipality; state; agreement; Governor; approval.**

The State of Nebraska is hereby authorized to enter into agreements with a municipality providing for the supplying by such municipality to the state of buildings or other facilities or portions thereof in such municipality or the zoning area authorized by law for the municipality. No such agreement shall be entered into unless (1) the Legislature shall theretofore specify the municipality and in general terms the type of building or facility or portion thereof to which such agreement shall pertain, and (2) in the event that any such agreement shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to the entry into force, be submitted to the state officer or agency for such power or control and shall be approved or disapproved by him or it within all matters of his or its jurisdiction. Each such agreement shall be approved by the Governor, shall be executed in the name and on behalf of the state and shall be signed by the Governor.

**Source:** Laws 1967, c. 464, § 4, p. 1437.

**72-1405 Municipality; state; agreement; contents.**

(1) Any agreement entered into between the state and a municipality pursuant to the provisions of sections 72-1401 to 72-1408 shall contain provisions specifying the following:

(a) The dates of commencement and termination of the agreement; *Provided*, that the duration of any such agreement from such commencement date, together with all extensions or renewals thereof, shall not exceed fifty years;

(b) The particular building or facility or portions thereof to which such agreement pertains;

(c) Whether the building or facility shall be used exclusively by the state or in part by the state and in part by other public bodies;

(d) The respective obligations of the parties to the agreement with respect to the construction, acquisition, furnishing and equipping and operation and maintenance of the building or facility;

(e) The allocation between the parties to the agreement of the costs of operation and maintenance and of utilities of such building or facility. In the event that the state is the sole user of such building or facility or is the occupier of the largest amount of space in such building or the primary user of the facility, such agreement may provide that all costs of operation and maintenance of the building or facility shall be at the expense of the state, in which event, if the state is not the sole user and occupier of the building or facility, the agreement shall provide for reimbursement to the state for proportionate costs of operation and maintenance supplied by the state to the other users and occupiers of the building or facility;

(f) The apportionment of all other costs to the parties thereto and the payments to be made by the state to the municipality for the use by the state of such building or facility or portion thereof. The computation of such costs and payments may reflect and include such items as would customarily be included by private parties entering into similar agreements for similar types of buildings and facilities, such as, but not limited to, indebtedness incurred with respect to such building or facility and reserves therefor, insurance, assessments and taxes or payments in lieu of taxes;

(g) Increasing the amount of costs allocated to the parties thereunder and the amount of the payments to be made by the state to the municipality thereunder in the event the items entered into in determining the costs to the parties thereunder and the payments by the state to the municipality thereunder shall be increased during the duration of such agreement and for credits or reimbursements by the parties thereto in the event of decreases in any such items, it being the intent of sections 72-1401 to 72-1408 that neither the state nor the municipality shall derive credit, profit or surplus by reason of the supplying by such municipality to the state of buildings or facilities or portions thereof, but that the cost to the state for the supplying by the municipality of such building or facility or portion thereof shall be at cost to the municipality;

(h) Permitting the occupancy or use of such building or facility or portion thereof by any officer, board, department, bureau or agency of the state so long as the use or occupancy thereof is consistent with the type and nature of such building or facility, it being the intention of sections 72-1401 to 72-1408 that the state may vary the use or occupancy of the building or facility or portion thereof from one officer, board, bureau, agency or department of the state to another in accordance with the interests of the state; and

(i) If the state is the sole user and occupier of the building or facility, or is the occupier of the largest amount of space in the building or facility or the primary user of the facility, granting the state an option to purchase such building or facility so long as the state shall continue to be such occupier or user. Such purchase price shall be established by the parties in the agreement and may be based on depreciated value or such other standard as the parties thereto may agree, and may include provision for any payment of damages which may be occasioned by the municipality upon the exercise by the state of such purchase option; *Provided*, that it shall be specified in such agreement that such purchase price shall be recomputed at the time of any exercise of the

purchase option so that no gain or loss results to the municipality by reason of the exercise of such option by the state.

(2) Any such agreement may contain provisions as to the following:

(a) Type of insurance to be carried and whether such insurance shall be carried by the state or municipality, and the rights and obligations of the parties in the event of damage or destruction in whole or in part of such building or facility;

(b) Provision for indemnification to the municipality by the state for any liability incurred by the municipality by reason of the actions of the state, and for indemnification to the state by the municipality for any liability incurred by the state by reason of the actions of the municipality;

(c) In the event that the municipality is the occupier of the larger amount of space in the building or the primary user of the facility, granting to the municipality the right to terminate the agreement prior to the date of termination stated therein, upon such notice as is specified in such agreement, in the event the municipality determines that the space occupied by the state, or the full use of the facility thereof by the municipality, are required by the municipality in order to carry out its purposes;

(d) The rights and obligations of the parties thereto in the event of condemnation in whole or in part of such building or facility; and

(e) Any other matters deemed necessary or proper by the parties thereto.

Any agreement entered into pursuant to this section may be in the form of a lease agreement or agreement to lease and, subject to the provisions of section 72-1406, may contain provisions similar to those customarily found in a lease between private parties or customarily found in a lease between parties for buildings or facilities similar to the type of building or facility to which the agreement between the state and municipality shall pertain.

**Source:** Laws 1967, c. 464, § 5, p. 1438.

**72-1406 Municipality; state; agreement; condition precedent; appropriation by Legislature; failure to appropriate; effect.**

It shall be a condition precedent to any agreement entered into pursuant to the provisions of sections 72-1401 to 72-1408, whether or not such condition be specified in any such agreement, that the state shall incur no liability under such agreement unless an appropriation shall have been made by the Legislature for the payment of any sums to become due and payable by the state under such agreement, in which event the state shall be liable thereunder only for the period for which an appropriation has been lawfully made, and that the continued effectiveness of such agreement shall be subject to the condition that appropriations shall be made from time to time by the Legislature for the payment of any sums to become due and payable by the state thereunder thereafter, in which event the state shall be liable thereunder only for the respective period or periods for which such an appropriation or appropriations have been lawfully made. In the event that the Legislature shall fail prior to the commencement of the term of the agreement to make an appropriation for the payment of sums which would otherwise become due and payable by the state thereunder, the effectiveness of the agreement shall thereupon immediately terminate, or in the event that the Legislature shall fail thereafter to make appropriations for the payment of sums which would otherwise become due

and payable thereunder by the state, such agreement shall immediately terminate upon the last day of any period for which an appropriation has been lawfully made by the Legislature. The provisions of this section shall not prohibit the entering into of any agreement authorized by sections 72-1401 to 72-1408 prior to the making of any such appropriation, but the state shall not incur any liability thereunder thereby.

**Source:** Laws 1967, c. 464, § 6, p. 1441.

**72-1407 Actions by state; liability; sections, how construed.**

In the event that the state shall be the sole occupier of any building furnished by the municipality or the sole user of a facility furnished by the municipality, the municipality shall not be liable in tort, contract or otherwise for actions by the state solely by reason of the fact that legal ownership, or title, to such building or facility may be in such municipality; *Provided*, that the provisions of this section shall not be deemed or construed in any way to affect any rights of holders of bonds of a municipality issued to finance such building or facility or the obligations of the municipality to the holders of such bonds.

**Source:** Laws 1967, c. 464, § 7, p. 1442.

**72-1408 Municipality; state; joint facility; agreement authorized.**

Whenever any municipality has entered into an agreement with the state pursuant to the provisions of section 72-1405, the state may construct a building or facility for its use which may be used, operated and maintained jointly with the building or facility of the municipality made available to the state as authorized herein, and the state and the municipality are authorized to enter into an agreement for that purpose.

**Source:** Laws 1967, c. 464, § 8, p. 1442.

**72-1409 State of Nebraska; power to lease or sublease.**

The State of Nebraska is hereby empowered to enter into a lease or sublease, as lessor or sublessor, with any public body corporate or any political subdivision of the State of Nebraska relating to any building or other facility which is or has been the subject of an agreement pursuant to the provisions of section 72-1405.

**Source:** Laws 1974, LB 945, § 1.

**72-1410 Municipality; state; agreement; provisions.**

Any agreement entered into between the state and a municipality pursuant to the provisions of sections 72-1401 to 72-1408 may provide for the following:

(1) The subleasing by the State of Nebraska to any public body corporate or political subdivision of the State of Nebraska of a portion of the space in the building or other facility with respect to which the agreement has been made; and

(2) The leasing by such municipality to any public body corporate or political subdivision of the State of Nebraska of a portion of the space in the building or other facility with respect to which the agreement has been made.

**Source:** Laws 1974, LB 945, § 2.

**72-1411 Municipality; power to lease.**

Any municipality is hereby empowered to enter into a lease, as lessor, with any public body corporate or political subdivision of the State of Nebraska relating to any building or other facility which is the subject of an agreement pursuant to the provisions of section 72-1405.

**Source:** Laws 1974, LB 945, § 3.

**72-1412 Political subdivision; power to lease; with whom; when.**

Any public body corporate or political subdivision of the State of Nebraska is hereby empowered to enter into a lease or sublease, as lessee or sublessee, with the State of Nebraska or any municipality relating to any building or other facility which is or has been the subject of an agreement pursuant to the provisions of section 72-1405.

**Source:** Laws 1974, LB 945, § 4.

**72-1413 Repealed. Laws 1976, LB 1006, § 10.**

**72-1414 Repealed. Laws 1976, LB 1006, § 10.**

**72-1415 Repealed. Laws 1976, LB 1006, § 10.**

**72-1416 Repealed. Laws 1976, LB 1006, § 10.**

**ARTICLE 15****POLITICAL SUBDIVISION DELINQUENT ACCOUNTS**

## Section

72-1501. Terms, defined.

72-1502. Delinquent accounts; how collected.

72-1503. Delinquent accounts; agency notify director; withholding of state aid payment; procedure.

**72-1501 Terms, defined.**

For purposes of sections 72-1501 to 72-1503, unless the context otherwise requires:

(1) Agency shall mean the State of Nebraska or any agency, commission, department, division, or office thereof, including the University of Nebraska and the state colleges;

(2) Account shall mean any amount of money owed to any agency by a political subdivision;

(3) Delinquent, as it applies to accounts, shall mean any account, not the subject of a bona fide dispute or litigation, that is not paid on or before the date specified by statute, rule, regulation, agreement, or court order, or the prior notice of the agency that payment of such account is now due;

(4) Political subdivision shall mean any city, village, township, district, county, or other political subdivision of the State of Nebraska;

(5) Director shall mean the Director of Administrative Services; and

(6) State aid payment shall mean any money appropriated from the General Fund for payment to a political subdivision.

**Source:** Laws 1982, LB 931, § 1.

**72-1502 Delinquent accounts; how collected.**

Unless otherwise specifically provided by law, delinquent accounts shall be collected in the manner provided by sections 72-1501 to 72-1503.

**Source:** Laws 1982, LB 931, § 2.

**72-1503 Delinquent accounts; agency notify director; withholding of state aid payment; procedure.**

(1) Each agency shall notify the director of all accounts in an amount, including interest and penalties, in excess of one thousand dollars that have been delinquent for a period of sixty days or more. Such notice shall certify the amount due, any penalties or interest thereon, and the political subdivision responsible for the payment of the account.

(2) Upon receipt of the notice required pursuant to subsection (1) of this section, the director shall notify the political subdivision of the delinquency and that such amount and any interest and penalties thereon, if not paid within thirty days, shall be withheld from the next state aid payment to such political subdivision and that, if the amount of such next state aid payment is insufficient to pay the account in full, plus interest and penalties thereon, a deduction shall continue to be made from subsequent state aid payments payable to such political subdivision until such time as the account and interest and penalties thereon are paid in full.

(3) At the end of the thirty-day period, the director shall contact the reporting agency and verify that the account is still delinquent. If the agency verifies that the account is still delinquent, the director shall notify the State Treasurer of the amount that shall be withheld from state aid payments to the political subdivision and the state aid payments from which such amount shall be withheld.

(4) The State Treasurer shall contact the agency in question and upon verification by the agency that the account remains delinquent, shall withhold the specified amounts from the specified state aid payments. The State Treasurer shall then credit the amount withheld to the fund to which the original payment was due.

**Source:** Laws 1982, LB 931, § 3.

**ARTICLE 16****DEBTS OWED TO STATE**

## Section

72-1601. Delinquent tax or obligation owed to the state; statements; Director of Administrative Services; duties.

**72-1601 Delinquent tax or obligation owed to the state; statements; Director of Administrative Services; duties.**

When any person is indebted to the State of Nebraska on account of any tax or other obligation then due and owing to the state, the officer, commission, or other division of state government charged with administration of the law under which such tax or other obligation arose may file with the Director of Administrative Services a statement of the amount so owing and shall at the same time mail a copy of such statement to the person owing such tax or other obligation. When such statement is filed, the director shall withhold an amount,

not exceeding the amount of the statement, from any debt then owing by the State of Nebraska to such person and by warrant or other order shall direct the State Treasurer to credit the amount so withheld to the proper fund. If the amount so withheld is not sufficient to satisfy the statement in full, successive statements may be filed with the director whenever the State of Nebraska becomes further indebted to such person. The withholding referred to in this section shall apply solely to money owing by the state.

**Source:** Laws 1959, c. 378, § 1, p. 1318; R.S.1943, (1986), § 77-2418; Laws 1989, LB 13, § 3.

**Cross References**

Tuition assistance program for Nebraska National Guard members, repayment provisions, see section 85-505.01.

**ARTICLE 17**

**SMALL BUSINESS INCUBATORS**

**Section**

- 72-1701. Act, how cited.
- 72-1702. Terms, defined.
- 72-1703. Business incubation centers; designation.
- 72-1704. Community board; appointment; members; meetings; public records; certain disclosures prohibited.
- 72-1705. Community board; duties; petition for designation of business incubation center.
- 72-1706. Community board; public agency; business incubation center; feasibility study; decision; requirements.
- 72-1707. Designation of business incubation center; duration; termination.
- 72-1708. Small businesses; location within business incubation center; application.
- 72-1709. Application for location within business incubation center; evaluation by community board; factors; notification.
- 72-1710. Community board; report; contents.
- 72-1711. Tenant of business incubation center; duties; extension; when authorized.
- 72-1712. Tenant of business incubation center; benefits; services.

**72-1701 Act, how cited.**

Sections 72-1701 to 72-1712 shall be known and may be cited as the Nebraska Small Business Incubator Act.

**Source:** Laws 1990, LB 409, § 1.

**72-1702 Terms, defined.**

For purposes of the Nebraska Small Business Incubator Act:

- (1) Business incubation center shall mean a facility in which units of space may be leased by a tenant and in which a tenant has access to business development services as described in section 72-1712;
- (2) Community board shall mean a board created pursuant to section 72-1704;
- (3) Public agency shall mean a state agency or commission or a political subdivision which retains ownership or control of one or more public buildings; and
- (4) Tenant shall mean a sole proprietorship, business partnership, limited liability company, or corporation operating a business for profit and leasing or otherwise occupying space in a business incubation center.

**Source:** Laws 1990, LB 409, § 2; Laws 1993, LB 121, § 461.

**72-1703 Business incubation centers; designation.**

Upon receipt of a petition from a community board pursuant to section 72-1705, a public agency may designate, in whole or in part, vacant or partially vacant public buildings as business incubation centers for the purpose of encouraging and assisting the establishment and expansion of small businesses within this state. A community board may lease the building from the public agency.

**Source:** Laws 1990, LB 409, § 3.

**72-1704 Community board; appointment; members; meetings; public records; certain disclosures prohibited.**

(1) A political subdivision, educational institution, or other organization that desires to have a vacant or partially vacant public building designated, in whole or in part, as a business incubation center shall appoint, in conjunction with political subdivisions or private organizations that agree to contribute monetarily or in kind to the center, a community board to perform the duties required by the Nebraska Small Business Incubator Act. The appointing body may designate an existing board of an economic development entity, upon consent of that entity, as the community board.

(2) Except as provided in subsection (3) of this section, the community board shall consist of not more than fifteen persons. The members of the community board shall consist of representatives from key segments of the community, including, but not limited to, political, financial, business, labor, and educational representatives. The community board shall elect from its members a chairperson.

(3) An existing board of an economic development entity designated as a community board pursuant to subsection (1) of this section need not meet the number requirements of subsection (2) of this section but shall meet the composition requirements of subsection (2) of this section.

(4) Community board members shall serve at the pleasure of the appointing bodies or until the community board is dissolved by the appointing body. Dissolution shall not occur before the expiration of any lease agreement between the community board and a public agency.

(5) Except as provided in subsection (7) of this section, the business which the community board may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act.

(6) Except as provided in subsection (7) of this section, a community board shall be subject to sections 84-712 to 84-712.09.

(7) The community board shall not disclose, orally or in writing, matters of a proprietary nature as described in subsection (7) of section 72-1708 without the consent of the applicant or tenant submitting the information.

**Source:** Laws 1990, LB 409, § 4; Laws 2004, LB 821, § 21.

**Cross References**

**Open Meetings Act**, see section 84-1407.

**72-1705 Community board; duties; petition for designation of business incubation center.**

(1) The community board shall:



- (a) Identify the building or part of the building under consideration for designation as a business incubation center;
- (b) Advertise the concept of a business incubation center in the surrounding area;
- (c) Solicit the views of the community concerning the designation of the building or part of the building under consideration as a business incubation center;
- (d) Identify possible tenants; and
- (e) Obtain commitments from persons, organizations, businesses, or other sources amounting to at least fifty percent of those costs not covered by rental fees that the board estimates will be needed for the establishment and operation of the business incubation center for three years.

(2) If after performing the duties required by subsection (1) of this section the community board determines that a designation of the building under consideration as a business incubation center is desirable and possible, the community board shall petition the public agency which has ownership or control of such building for the designation.

**Source:** Laws 1990, LB 409, § 5.

**72-1706 Community board; public agency; business incubation center; feasibility study; decision; requirements.**

(1) After filing a petition pursuant to section 72-1705, the community board, in cooperation with the public agency, shall conduct and complete within one hundred eighty calendar days a center feasibility study. The study shall include, but not be limited to, all of the following factors:

- (a) Necessary lease, purchase, renovation, or construction costs;
- (b) Estimated rental costs for tenants;
- (c) Estimated utility costs;
- (d) Estimated wage or salary rates of potential employees of the center which may include a building manager, receptionist, typist, and security guard;
- (e) Proposed operating budget for the center;
- (f) Prospects of attracting suitable businesses to the center; and
- (g) The ability of the community to provide necessary support for the center, including, but not limited to, technical assistance and training, assistance in attracting employees, assistance in relocating a business, assistance in business startup, and library facilities.

(2) Within thirty calendar days after completion of the feasibility study, the public agency, based upon the study, the criteria set forth in subsection (1) of this section, and any plans for future use of the building by the public agency, shall notify the community board of its decision. If the public agency does not designate the building as a business incubation center, the public agency shall set forth the reasons for its decision in its notification letter to the community board.

**Source:** Laws 1990, LB 409, § 6.

**72-1707 Designation of business incubation center; duration; termination.**

(1) Except as provided in subsection (2) of this section, a designation of a building as a business incubation center shall remain in effect for such time as agreed to by the public agency and the community board.

(2) A public agency which has a building or a portion of a building designated as a business incubation center and which desires to terminate such designation prior to the date agreed to in subsection (1) of this section may terminate such designation by notifying the community board at least two years before the time the building will be needed. Upon receipt of notification, the community board shall publicize the closing date of the center to the tenants and to the community.

**Source:** Laws 1990, LB 409, § 7.

**72-1708 Small businesses; location within business incubation center; application.**

When a building is designated as a business incubation center by a public agency, its community board shall accept applications from any person desiring to start or expand a small business and to locate that business within the business incubation center. The community board shall develop an application form requiring at least the following information:

- (1) The type of business that the applicant wishes to start or expand;
- (2) An estimate of the number of employees the applicant will need in order to start or expand the business and a two-year projection of future employment;
- (3) The skill and educational level of the employees that the applicant plans to hire;
- (4) The ability of the applicant to start or operate a successful business;
- (5) A general statement as to why the applicant wishes to be accepted into the business incubation center;
- (6) A signed statement by the applicant that he or she understands and accepts the obligations placed upon him or her under section 72-1711 if accepted into the business incubation center; and
- (7) A designation by the applicant of information that the applicant considers to be of a proprietary nature and that he or she does not want to be made public.

**Source:** Laws 1990, LB 409, § 8.

**72-1709 Application for location within business incubation center; evaluation by community board; factors; notification.**

(1) A community board shall evaluate applicants who want to start or expand a small business and to locate within the business incubation center based upon, but not limited to, all of the following factors:

- (a) The likelihood that the business will be profitable;
- (b) Whether the product that would be manufactured or the service that would be rendered would be new to the state or the community;
- (c) The potential marketability of the product or service;
- (d) The likelihood that the business will generate a significant number of new jobs and not eliminate existing jobs;

(e) The likelihood that new jobs generated will be filled by persons who presently are unemployed or whose skills are underemployed; and

(f) The likelihood that the business will not be started if the applicant is not accepted into the business incubation center.

(2) A community board shall forward to each applicant whose application it rejects notice of its rejection together with the reasons for the rejection.

(3) A community board shall forward to each applicant it favorably evaluates notification of its decision and of whether or not space exists to accept the applicant.

**Source:** Laws 1990, LB 409, § 9.

**72-1710 Community board; report; contents.**

A community board shall report electronically at least annually to the Legislature on the activities of the community board and the center. The report shall include, at minimum, the name of each applicant whose application the community board rejects, together with the reasons for the rejection, and the name of each applicant whose application the community board favorably evaluates.

**Source:** Laws 1990, LB 409, § 10; Laws 2012, LB782, § 132.

**72-1711 Tenant of business incubation center; duties; extension; when authorized.**

A tenant shall:

(1) Pay rent to the community board in an amount to be determined by the community board. The community board may agree to have the rent for a predetermined number of months payable at a later date by which time the business is expected to have received committed starting capital;

(2) Pay utilities as determined by the community board; and

(3) Relocate to a permanent location not later than two years after entering a business incubation center, except that a business may request in writing extensions of this requirement for periods of not more than twelve months. The community board may grant extensions of up to twelve months at a time based upon a review of the factors in subsection (1) of section 72-1709. A tenant shall be given an opportunity to submit written information concerning those factors to the community board before the community board makes its decision approving or denying an extension.

**Source:** Laws 1990, LB 409, § 11.

**72-1712 Tenant of business incubation center; benefits; services.**

(1) In return for meeting the requirements of section 72-1711, a tenant shall receive the following benefits:

(a) Physical space within the center;

(b) The services of a building manager; and

(c) Services or facilities available within the center that are agreed upon by the community board and the tenants. These services and facilities may include, but are not limited to, cleaning, building security, typing, and reception services, conference, laboratory, and library facilities, duplicating machines, and computers.

(2) In addition to the benefits described in subsection (1) of this section, the center may make available certain professional services on a fee-for-use basis. These services, which the building manager or community board shall arrange, may include, but are not limited to, information on government regulations, basic management skills, advertising and promotion, marketing, sales, control of inventory levels, recruitment of employees, labor relations, and financial counseling in areas such as venture capital, risk management, taxes, insurance, and qualifying for government small business loans.

**Source:** Laws 1990, LB 409, § 12.

## ARTICLE 18 JOSLYN CASTLE

### Section

- 72-1801. Repealed. Laws 2012, LB 707, § 1.  
72-1802. Repealed. Laws 2012, LB 707, § 1.

**72-1801 Repealed. Laws 2012, LB 707, § 1.**

**72-1802 Repealed. Laws 2012, LB 707, § 1.**

## ARTICLE 19 NEBRASKA TREE RECOVERY PROGRAM

### Section

- 72-1901. Legislative findings.  
72-1902. Nebraska Tree Recovery Program; legislative intent; administration; rules and regulations.  
72-1903. Grants; eligible applicants.  
72-1904. Grants; application; considerations.

### **72-1901 Legislative findings.**

The Legislature finds that, due to severe weather conditions and diseases, cities and villages across Nebraska are experiencing tree mortality. Most cities and villages have been unable to act decisively due to insufficient funds to remove, dispose of, and replace trees situated on public land. Dead trees are fast becoming a liability and a safety problem for cities and villages.

**Source:** Laws 1994, LB 695, § 1.

### **72-1902 Nebraska Tree Recovery Program; legislative intent; administration; rules and regulations.**

It is the intent of the Legislature that two hundred fifty thousand dollars be appropriated from the General Fund for fiscal year 1994-95 for a program to fund tree removal, disposal, and replacement costs. The Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources Department of Forestry, Fisheries and Wildlife shall administer the program through a grant process, and the program shall be known as the Nebraska Tree Recovery Program. The Nebraska Community Forestry Council shall act as an advisory body in administration of the program. The service shall adopt and promulgate rules and regulations necessary to carry out sections 72-1901 to 72-1904.

**Source:** Laws 1994, LB 695, § 2.

**72-1903 Grants; eligible applicants.**

Any city, village, county, or agency thereof or any state agency responsible for the upkeep of state-owned real property may apply for a grant from the Nebraska Tree Recovery Program. Any civic group, tree advisory board, or other entity working with a governmental agency on tree planting, removal, and replacement may apply for a grant under the program.

**Source:** Laws 1994, LB 695, § 3.

**72-1904 Grants; application; considerations.**

Applications for grants for the first year of the Nebraska Tree Recovery Program shall be received not later than July 1, 1994, and grants shall be awarded not later than October 1, 1994. In subsequent years the Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources Department of Forestry, Fisheries and Wildlife shall establish the date by which applications must be submitted, and grants shall be awarded not later than ninety days after such date.

The following shall be considered in reviewing a proposal of an applicant for a grant from the program:

- (1) Grant money shall be used to plant or remove trees only on land owned by state or local governments, including parks, public grounds, and city rights-of-way;
- (2) Trees shall be purchased from commercial Nebraska nurseries;
- (3) The applicant shall provide funds to match the grant at a fifty-fifty match rate;
- (4) Local labor may be considered as in-kind participation in calculating the amount of the applicant's matching funds required by subdivision (3) of this section;
- (5) No state or local funds under the program shall be used to purchase real property;
- (6) Tree species to be planted under the proposal shall be adaptable to Nebraska and the local area in order for such trees to grow and thrive;
- (7) Arboricultural experts may be consulted at the local and state levels for expertise in developing local tree replanting programs;
- (8) Local programs shall indicate a partnership between the applicant and property owners showing how to best replant and maintain trees for the first three years after planting; and
- (9) Cities, villages, civic groups, students, and families should be involved in selecting, replanting, and caring for trees for the valuable educational aspects of the program.

**Source:** Laws 1994, LB 695, § 4.

**ARTICLE 20****NIOBRARA RIVER CORRIDOR**

Section	
72-2001.	Repealed. Laws 2000, LB 1234, § 24.
72-2002.	Repealed. Laws 2000, LB 1234, § 24.
72-2003.	Repealed. Laws 2000, LB 1234, § 24.
72-2004.	Repealed. Laws 2000, LB 1234, § 24.

## Section

- 72-2004.01. Act, how cited.
- 72-2005. Legislative findings.
- 72-2006. Niobrara scenic river corridor, defined.
- 72-2007. Niobrara Council; created; members; terms; meetings; expenses.
- 72-2008. Niobrara Council; powers and duties; report.
- 72-2009. Niobrara Council Fund; created; use; investment.
- 72-2010. Niobrara Council; zoning duties.
- 72-2011. Activities within corridor; limitations.
- 72-2012. Niobrara Council; zoning jurisdiction.

**72-2001 Repealed. Laws 2000, LB 1234, § 24.**

**72-2002 Repealed. Laws 2000, LB 1234, § 24.**

**72-2003 Repealed. Laws 2000, LB 1234, § 24.**

**72-2004 Repealed. Laws 2000, LB 1234, § 24.**

**72-2004.01 Act, how cited.**

Sections 72-2004.01 to 72-2012 shall be known and may be cited as the Niobrara Scenic River Act.

**Source:** Laws 2002, LB 1003, § 47.

**72-2005 Legislative findings.**

As a result of the recent federal court ruling in National Parks and Conservation Association v. National Park Service and in order to maintain an aspect of local control over the Niobrara scenic river corridor, the Legislature finds that there is a need to reconstitute the existing Niobrara Council with the express authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service. The purpose of the Niobrara Scenic River Act is to effectuate changes in the council necessary to ensure the continuation of the cooperative management relationship between the Niobrara Council and the National Park Service so that local participation and control over this valuable natural resource can be maintained.

**Source:** Laws 2000, LB 1234, § 1; Laws 2002, LB 1003, § 42.

**72-2006 Niobrara scenic river corridor, defined.**

For purposes of the Niobrara Scenic River Act, Niobrara scenic river corridor means the area designated as a national scenic river and a part of the national wild and scenic rivers system under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, and described in the 1996 Niobrara National Scenic River General Management Plan/Environmental Impact Statement.

**Source:** Laws 2000, LB 1234, § 2; Laws 2002, LB 1003, § 43.

**72-2007 Niobrara Council; created; members; terms; meetings; expenses.**

(1) The Niobrara Council is created. The council membership shall include:

(a) A commissioner from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) The regional director for the National Park Service or his or her designee and the regional director for the United States Fish and Wildlife Service or his or her designee. The members under this subdivision shall be nonvoting members unless and until the agencies represented by these members formally authorize such members to vote on all matters before the council by notifying the council and the Governor in writing;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board members on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council;

(g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council.

The appointments made pursuant to subdivisions (1)(e) through (h) of this section shall be subject to confirmation by the Legislature. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A quorum shall be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council.

(4) Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

**Source:** Laws 2000, LB 1234, § 3; Laws 2001, LB 182, § 1; Laws 2015, LB310, § 1; Laws 2016, LB1038, § 15.

**72-2008 Niobrara Council; powers and duties; report.**

The mission of the Niobrara Council is to assist in all aspects of the management of the Niobrara scenic river corridor since portions of the Niobrara River have been designated as a national scenic river under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, giving consideration and respect to local and governmental input and private landowner rights, and to maintain and protect the integrity of the resources associated with the Niobrara scenic river corridor. The council shall perform management functions related to the Niobrara scenic river corridor, including, but not limited to, those authorized and delegated to it by the National Park Service. The council may promulgate its own rules and internal policies to carry out the purposes of the Niobrara Scenic River Act. The Game and Parks Commission may provide administrative, budgetary, operational, and programmatic support when requested by the council to carry out its duties. In the Niobrara scenic river corridor, the council may hold title to real estate in the name of the council. The council may purchase, accept gifts of, or trade real estate and may obtain conservation easements as provided in the Conservation and Preservation Easements Act. Acquisition of conservation easements outside the boundaries of the Niobrara scenic river corridor shall require the approval of the appropriate governing body as provided in section 76-2,112. On December 1, 2016, and on each December 1 thereafter, the council shall electronically submit an annual report to the Clerk of the Legislature and the chairperson of the Natural Resources Committee of the Legislature describing expenditures made pursuant to the Niobrara Scenic River Act.

**Source:** Laws 2000, LB 1234, § 4; Laws 2002, LB 1003, § 44; Laws 2016, LB1038, § 16.

**Cross References**

**Conservation and Preservation Easements Act**, see section 76-2,118.

**72-2009 Niobrara Council Fund; created; use; investment.**

(1) The Niobrara Council Fund is created. The fund shall be administered by the Niobrara Council. The council may accept any private or public funds to carry out its work and such funds shall be remitted to the State Treasurer for credit to the fund. The fund shall consist of such funds and legislative appropriations made to the council. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Niobrara Council Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall, on March 31, 2016, transfer the balance of any money in the Nebraska Youth Conservation Program Fund, after the transfer of one hundred thousand dollars to the Cowboy Trail Fund as provided for in subsection (2) of section 37-913 has been made, to the Niobrara Council Fund.

**Source:** Laws 2000, LB 1234, § 5; Laws 2009, First Spec. Sess., LB3, § 49; Laws 2016, LB957, § 7.

**Cross References**

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

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

**72-2010 Niobrara Council; zoning duties.**



The Niobrara Council shall review and approve or reject all zoning regulations, including existing regulations, new regulations, proposed regulations, and variances of any type including variances for use and location, which affect land in the Niobrara scenic river corridor that is not incorporated within the boundaries of a municipality. If the council rejects a zoning regulation or variance, the governing body enacting the regulation or variance has six months to present an alternative to the council. If no alternative is proposed or if the alternative is also rejected, the council may adopt zoning regulations for such area. In counties without zoning the council may develop and enforce zoning regulations within the Niobrara scenic river corridor under the guidance of the federal Wild and Scenic Rivers Act or under the guidance of the general management plan as written by the National Park Service. The council shall follow the requirements for zoning regulations in sections 23-114 to 23-114.05 and 23-164 to 23-174.10, except that no separate planning commission is required and the council shall fulfill the duties of both the county board and the planning commission in such sections.

**Source:** Laws 2000, LB 1234, § 6; Laws 2002, LB 1003, § 45.

**72-2011 Activities within corridor; limitations.**

(1) Any state or state-assisted activity or undertaking proposed within the Niobrara scenic river corridor shall be consistent with the purpose of the scenic river designation, including the scenic river's free-flowing condition and scenic, geological, biological, agricultural, historic, and prehistoric resources.

(2) The head of any state or local agency having direct or indirect jurisdiction over a proposed state or state-assisted undertaking within the Niobrara scenic river corridor and the head of any agency having authority to license or permit any undertaking in such area shall prepare a detailed proposal and submit it to the Niobrara Council for its review.

(3) The council shall review the proposal and consult with the agency. The council has ninety days after the date that the proposal is received to make a determination of whether or not the proposed action is consistent with the purposes of this section. If the council determines that the proposal is not consistent with the purposes of this section, the council shall so notify the agency and the agency shall not proceed with the action until after a justification for the action has been submitted to the Governor and approved by the Governor in writing. The justification shall include the following elements: The anticipated current, future, and cumulative effects on the scenic and natural resources of the designated scenic river corridor; the social and economic necessity for the proposed action; all possible alternatives to the proposed action including a no-action alternative; the comparative benefits of proposed alternative actions; and the mitigation measures outlined in the proposed action.

**Source:** Laws 2000, LB 1234, § 7; Laws 2002, LB 1003, § 46.

**72-2012 Niobrara Council; zoning jurisdiction.**

The Niobrara Council shall not have zoning jurisdiction outside the boundaries of the Niobrara scenic river corridor.

**Source:** Laws 2000, LB 1234, § 8.

## ARTICLE 21

## GOVERNOR'S RESIDENCE

## Section

- 72-2101. Governor's Residence Advisory Commission; created; duties.  
72-2102. Governor's Residence Advisory Commission; members.  
72-2103. Commission members; expenses.  
72-2104. Commission members; terms; vacancies.  
72-2105. Commission; meetings; quorum.

**72-2101 Governor's Residence Advisory Commission; created; duties.**

The Governor's Residence Advisory Commission is created. The commission shall conduct an annual inspection of the Governor's residence. A report on the inspection shall be submitted to the Governor within thirty days after the day of the inspection. The report shall include recommendations for major maintenance or repair projects, if needed. Implementation and priority of an approved major maintenance or repair project shall be determined by the Governor in cooperation with the Director of Administrative Services. Additionally, no changes, additions, deletions, or other alterations to the residence, including its exterior, interior, decorative objects, contents, or grounds shall be made without the prior approval of the commission, except for the Governor's private living quarters located on the second floor of the residence.

**Source:** Laws 1998, LB 1129, § 28; Laws 2009, LB207, § 1.

**72-2102 Governor's Residence Advisory Commission; members.**

The Governor's Residence Advisory Commission consists of the following members: (1) The Governor's spouse; (2) the Director of Administrative Services or his or her designee; (3) the administrator of the Task Force for Building Renewal; (4) six at-large members, two from each congressional district, with no more than three of the six members being from the same political party; (5) the Director of the Nebraska State Historical Society; and (6) a current professional member of the American Society of Interior Designers. The Governor's spouse is designated the chairperson of the Governor's Residence Advisory Commission. If the Governor is unmarried or the Governor's spouse is unable to fulfill his or her duties on the commission, the Governor shall appoint an at-large member to fill that seat on the commission. The at-large member shall have the same duties as the Governor's spouse would have had. The Director of Administrative Services or his or her designee is designated the vice-chairperson of the commission. The administrator of the Task Force for Building Renewal is designated the secretary of the commission and is responsible for the submission of the annual report and any other reports or correspondence from the commission.

**Source:** Laws 1998, LB 1129, § 29.

**72-2103 Commission members; expenses.**

The members of the Governor's Residence Advisory Commission shall serve without compensation. The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1998, LB 1129, § 30.

**72-2104 Commission members; terms; vacancies.**

**NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION § 72-2202**

The Governor's spouse shall remain on the Governor's Residence Advisory Commission as chairperson during the time his or her spouse is Governor, but in the case of an at-large member appointed in place of the Governor's spouse, the at-large member shall serve at the pleasure of the Governor. The agency directors and task force administrator on the commission shall serve as long as such persons hold those positions. The remaining members of the commission shall serve four-year terms, subject to removal by the Governor for cause. Vacancies on the commission caused by the death, removal, or resignation of a member shall be filled by the Governor for the remainder of the unexpired term.

**Source:** Laws 1998, LB 1129, § 31.

**72-2105 Commission; meetings; quorum.**

The Governor's Residence Advisory Commission shall meet at the direction of the chairperson of the commission. At least one meeting shall be held after the annual inspection. A simple majority of the commission shall constitute a quorum for the transaction of business.

**Source:** Laws 1998, LB 1129, § 32; Laws 2009, LB207, § 2.

**ARTICLE 22**

**NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION ACT**

Section	
72-2201.	Act, how cited.
72-2202.	Legislative intent.
72-2203.	Terms, defined.
72-2204.	Office of the Nebraska Capitol Commission; established; State Capitol Administrator; appointment.
72-2205.	Administrator; powers and duties.
72-2205.01.	Administrator; additional services; authorized.
72-2206.	Administrator; qualifications.
72-2207.	Administrator; bond or insurance.
72-2208.	State Building Administrator; transfer of personnel and property.
72-2209.	Administrator; personnel; materiel; duties.
72-2210.	Office; facilities planning, construction, and administration; powers and duties.
72-2211.	Capitol Restoration Cash Fund; created; use; investment.
72-2211.01.	Capitol Commission Revolving Fund; created; use; investment.
72-2212.	Motor vehicle parking; rules and regulations; enforcement.
72-2213.	Office space; determination of use; maintenance of building.
72-2214.	Administrator; policies and guidelines; required.

**72-2201 Act, how cited.**

Sections 72-2201 to 72-2214 shall be known and may be cited as the Nebraska State Capitol Preservation and Restoration Act.

**Source:** Laws 2004, LB 439, § 1; Laws 2005, LB 684, § 1.

**72-2202 Legislative intent.**

(1) In 1919, the Nebraska State Capitol Commission began the search for an architect to design a new State Capitol to replace the existing structure in Lincoln. New York architect Bertram Grosvenor Goodhue was selected as the chief architect, and construction began in April 1922. During the ten-year construction period, the Nebraska State Capitol Commission, comprised at that

time of the Governor, the State Engineer, and three appointed members, oversaw the building's construction, with the final phase completed in 1932. The final cost of construction was nine million eight hundred thousand dollars.

(2) Considered one of the world's greatest architectural achievements, the Nebraska State Capitol contains all three branches of government and is an inspiring monument for all Nebraskans. No other building in the State of Nebraska is as recognized and open to all Nebraskans as the State Capitol.

(3) Because of the history and unique beauty of the State Capitol, it is the intent of the Legislature that the Office of the Nebraska Capitol Commission, created pursuant to the Nebraska State Capitol Preservation and Restoration Act, provide the highest quality preservation, restoration, and enhancement of and long-term planning for the State Capitol and capitol grounds for the perpetual use by state government and the enjoyment of all persons.

**Source:** Laws 2004, LB 439, § 2.

**72-2203 Terms, defined.**

For purposes of the Nebraska State Capitol Preservation and Restoration Act:

- (1) Administrator means the State Capitol Administrator;
- (2) Commission means the Nebraska Capitol Commission; and
- (3) Office means the Office of the Nebraska Capitol Commission.

**Source:** Laws 2004, LB 439, § 3.

**72-2204 Office of the Nebraska Capitol Commission; established; State Capitol Administrator; appointment.**

The Nebraska Capitol Commission shall be the custodian of the State Capitol and capitol grounds. To aid in these duties, the Office of the Nebraska Capitol Commission is established under the Nebraska Capitol Commission. The State Capitol Administrator shall be the head of the office and shall be recommended by the commission and appointed by the Governor. The compensation of the administrator shall be established by the Governor, subject to availability of appropriations. For administrative and budgetary purposes, the office shall be housed within the Department of Administrative Services, which department shall provide all of the accounting, personnel, information management, and communication support services for the office. The office and all staff shall be physically located in the State Capitol. All administration and budgetary decisions for the office shall be made by the administrator.

**Source:** Laws 2004, LB 439, § 4.

**72-2205 Administrator; powers and duties.**

(1) The administrator shall have the authority to develop, produce, and distribute books, brochures, pictures, slides, postcards, and other informational or promotional material concerning the State Capitol. The administrator shall have control over money received from the distribution of such material and from private or public donations. Such proceeds and donations shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund.

(2) The administrator, after receiving advice from the commission, is authorized to provide facilities for restaurants, cafeterias, or other services and newsstands for convenience of state officers and employees in the State Capitol

when such space is not needed for public use. Proceeds from the operations and rental of such facilities shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund.

(3) The administrator, after receiving advice from the commission, is authorized to lease, rent, or permit for use as apartments, dwellings, or offices any or all of the property acquired for future building needs for the State Capitol and capitol grounds, except that all leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy thereof shall cease. All money received as rent from such property shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund and, with interest accrued, be designated as prescribed in section 72-2211.

(4) The administrator shall see that all parts and apartments of the State Capitol and capitol grounds are properly ventilated and kept clean and orderly.

(5) The administrator shall acquire a flag of the United States of America of suitable and convenient size. The colors of the flag shall be fast colors, and the cloth shall be of substantial material. The administrator shall display this flag and the Nebraska State Flag of similar specifications prominently on State Capitol grounds.

(6) The administrator shall ensure that, at proper hours, all visitors are properly escorted through the State Capitol and over the capitol grounds, free of expense.

(7) The administrator shall at all times have charge of and supervision over janitors and other employees in and about the State Capitol and capitol grounds.

(8) The administrator shall institute, in the name of the state and with the advice of the Attorney General, civil and criminal proceedings against any person for injury or threatened injury to any public property in the State Capitol or on the capitol grounds or for committing or threatening to commit a nuisance therein or thereon.

(9) The administrator shall keep in his or her office a complete record containing plans, specifications, and surveys of the State Capitol and capitol grounds and of underground construction thereto.

**Source:** Laws 2004, LB 439, § 5.

**72-2205.01 Administrator; additional services; authorized.**

The administrator, with the approval of the commission, may enter into agreements to provide additional facility-related maintenance, renovation, and operation services requested by agencies housed in the State Capitol. The charges collected from such agencies shall be placed in the Capitol Commission Revolving Fund. The administrator shall make payments for the costs associated with such additional services from the Capitol Commission Revolving Fund.

**Source:** Laws 2005, LB 684, § 2.

**72-2206 Administrator; qualifications.**

The administrator shall have (1) a bachelor's degree or higher degree in architecture from an accredited college or university and (2) at least five years

of administrative experience in historic preservation and planning, design, and construction of major construction projects.

**Source:** Laws 2004, LB 439, § 6.

**72-2207 Administrator; bond or insurance.**

Before entering upon the discharge of the duties of his or her office, the administrator shall be bonded or insured as required by section 11-201. The premium shall be paid by the state.

**Source:** Laws 2004, LB 439, § 7.

**72-2208 State Building Administrator; transfer of personnel and property.**

The State Building Administrator shall transfer all Capitol Group staff, offices, records, including Nebraska Capitol Collections, powers, duties, and responsibilities of the state building division on or before July 1, 2004, to the State Capitol Administrator, who shall be reestablished in the Office of the Nebraska Capitol Commission.

**Source:** Laws 2004, LB 439, § 8.

**72-2209 Administrator; personnel; materiel; duties.**

The administrator, with the advice of the commission, shall employ all assistants, architects, engineers, janitors, custodians, and caretakers necessary for the efficient and economical discharge of the duties imposed by the Nebraska State Capitol Preservation and Restoration Act. All such employees, except for the administrator, shall be included within the State Personnel System. The administrator shall purchase, through the materiel division of the Department of Administrative Services, such supplies, material, and equipment as may be necessary for the proper maintenance of the State Capitol and capitol grounds. The total expenditures for such purposes shall not exceed the appropriations made therefor.

**Source:** Laws 2004, LB 439, § 9.

**72-2210 Office; facilities planning, construction, and administration; powers and duties.**

(1) The office shall have the primary functions and responsibilities of facilities planning, facilities construction, and facilities administration for the State Capitol and capitol grounds and may adopt and promulgate rules and regulations to carry out the provisions of this section and subsection (1) of section 81-1108.38.

(2) Facilities planning includes the following responsibilities and duties:

- (a) To maintain utilization records of the State Capitol and capitol grounds;
- (b) To define and review program statements based on space utilization standards;
- (c) To prepare and review planning and construction documents;
- (d) To develop and maintain time-cost schedules for capital construction projects;
- (e) To prepare annually a long-range plan for the commission, listing the maintenance needed for the interior and exterior of the State Capitol; and

**NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION § 72-2211**

(f) To assist the commission, the budget division of the Department of Administrative Services, and the Legislative Fiscal Analyst in preparing budget recommendations.

(3) Facilities construction includes the following powers and duties:

(a) To maintain close contact with and inspections of each project for the State Capitol and capitol grounds so as to assure execution of the highest quality work product, time-cost schedules, and efficient contract performance;

(b) To perform final acceptance inspections and evaluations; and

(c) To coordinate all modifications or change orders and progress payment orders.

(4) Facilities administration includes the following powers and duties:

(a) To provide or assure adequate administration and preservation maintenance of, repairs to, and custodial duties for the State Capitol and capitol grounds;

(b) To be responsible for all maintenance, repairs, and custodial duties necessary to preserve properly and maintain the State Capitol and capitol grounds;

(c) To report to the commission quarterly, or as prescribed by the commission, the time-cost data on State Capitol construction projects;

(d) To be responsible for parking on the capitol grounds; and

(e) To submit to the commission a final report on each State Capitol project. The report shall include, but not be limited to, a comparison of final costs and appropriations made for the project, change orders, and modifications, and a conclusion as to whether the construction complied with the related approved project purpose and program statement. Such report shall be required on all projects costing fifty thousand dollars or more and any other projects designated by the commission.

**Source:** Laws 2004, LB 439, § 10.

**72-2211 Capitol Restoration Cash Fund; created; use; investment.**

The Capitol Restoration Cash Fund is created. The administrator shall administer the fund, which shall consist of money received from the sale of material, rental revenue, private donations, public donations, and transfers from the Nebraska Capital Construction Fund as directed by the Legislature. The Capitol Restoration Cash Fund shall be used to finance projects to restore the State Capitol and capitol grounds to their original condition, to purchase and conserve items to be added to the Nebraska Capitol Collections housed in the State Capitol, to produce promotional material concerning the State Capitol, its grounds, and the Nebraska State Capitol Environs District, and to pay the expenditures for a project manager for the Capitol Heating, Ventilation, and Air Conditioning Systems Replacement Project until such time as the project is completed, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Such expenditures shall be prescribed by the administrator and approved by the commission. Any money in the Capitol Restoration Cash Fund available for investment shall be invested by the

state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2004, LB 439, § 11; Laws 2009, First Spec. Sess., LB3, § 50; Laws 2017, LB331, § 40.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-2211.01 Capitol Commission Revolving Fund; created; use; investment.**

The Capitol Commission Revolving Fund is created. The administrator shall administer the fund. The fund shall consist of receipts collected pursuant to agreements between the commission and other entities as provided by law. The fund shall be used to support the operations of the commission. Any money in the Capitol Commission Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 684, § 3.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**72-2212 Motor vehicle parking; rules and regulations; enforcement.**

To promote the public safety and welfare, the State Building Administrator, in consultation with the State Capitol Administrator, shall adopt and promulgate rules and regulations governing motor vehicle parking on the approaches to the State Capitol. Such rules and regulations may limit, restrict, or prohibit parking thereon. Notwithstanding the provisions of the Administrative Procedure Act, such rules and regulations shall become effective upon posting notice of the same on or about the premises to be regulated. If any vehicle is found upon any regulated premises in violation of this section, or the rules and regulations adopted pursuant thereto, and the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held responsible for such violation.

**Source:** Laws 2004, LB 439, § 12.

**Cross References**

Administrative Procedure Act, see section 84-920.

**72-2213 Office space; determination of use; maintenance of building.**

(1) The office space in the State Capitol or any other state office building occupied by the Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Auditor of Public Accounts, or Chief Justice and judges of the Supreme Court and Court of Appeals, including the office of the Clerk of the Supreme Court and courtrooms, shall remain under the control of such constitutional officer or Chief Justice. The Executive Board of the Legislative Council shall determine its office space requirements in the State Capitol and may occupy such office space as it requires except as provided in this subsection.

(2) After the determination by the Executive Board of the Legislative Council pursuant to subsection (1) of this section, the administrator, with the advice of



the commission, shall determine the space needs of all other departments and agencies of the state located in the State Capitol and assign the remaining office space. The determination of such needs shall be based on the following considerations: (a) The availability of space within the State Capitol as provided in this section; (b) the desirability of locating all divisions and other organizational subunits of each department and agency of the state in physical proximity to the office of its head; (c) the degree to which the convenience of the public may be served by assignment of various areas within the State Capitol; (d) the interdependence of functions and operating procedures of the various agencies; (e) applicable standards governing office requirements; and (f) the availability of appropriations with which to finance renovations, remodeling, and movement of equipment necessary to accommodate any proposed assignment or reassignment of area.

(3) The office shall have responsibility for provision and replacement of lighting, lighting fixtures, heating, cooling and ventilation, and janitorial, custodial, and all other building services, including care and custody of the State Capitol and capitol grounds, as may now be provided by law.

(4) Responsibility for employment and supervision of custodial workers for areas of the State Capitol occupied by the Legislature, the courts, and executive departments and agencies shall be in accordance with such agreements as may be defined by authorized representatives of the three branches. All funds for improvements, remodeling, renovation, partitioning, or replacement of major fixtures, including carpeting, flooring, provision of drapes, lighting fixtures, and lamps, within any area of the State Capitol shall be at the disposal of the administrator.

**Source:** Laws 2004, LB 439, § 13.

**72-2214 Administrator; policies and guidelines; required.**

The administrator, with the advice of the commission, shall establish policies and guidelines for the implementation of the approved Capitol Landscape Restoration Master Plan on and around the capitol grounds, for site development in and around the State Capitol and capitol grounds, and for use of the State Capitol's preservation and adaptive-use spaces, including the adoption of a document of standards.

**Source:** Laws 2004, LB 439, § 14.

**ARTICLE 23**

**PUBLIC FACILITIES CONSTRUCTION AND FINANCE ACT**

Section

- 72-2301. Act, how cited.
- 72-2302. Purpose of act.
- 72-2303. Terms, defined.
- 72-2304. Bonds authorized; public hearing; notice; election, when required; remonstrance petition.
- 72-2305. Public buildings, recreational facilities, drainage, streets, and roads; bonds; amount authorized.
- 72-2306. Information technology for libraries; bonds; amount authorized.
- 72-2307. Taxes authorized.
- 72-2308. Act; how construed; bonds; applicability of other provisions.
- 72-2309. Bonds; election; notice.
- 72-2310. Qualified public agencies; statement; contents; certified under oath.

**72-2301 Act, how cited.**

Sections 72-2301 to 72-2310 shall be known and may be cited as the Public Facilities Construction and Finance Act.

**Source:** Laws 2005, LB 217, § 1; Laws 2018, LB1000, § 3.  
Effective date April 18, 2018.

**72-2302 Purpose of act.**

It is the purpose of the Public Facilities Construction and Finance Act to allow local governmental units which cooperate with other governmental units to issue bonds to finance joint projects which may be serviced by property taxes, regardless of the restrictions on the issuance of debt contained in other statutory provisions, home rule charters, or the limitations in section 77-3442, for the acquisition, construction, financing, operation, and ownership of (1) public buildings and related improvements to real estate, recreational facilities and related improvements, flood control and storm water drainage, and street and road construction and improvements and (2) information technology for libraries operated by counties, municipalities, school districts, educational service units, and community colleges.

**Source:** Laws 2005, LB 217, § 2.

**72-2303 Terms, defined.**

For purposes of the Public Facilities Construction and Finance Act:

(1) Bond measure means a resolution or ordinance which authorizes bonds to be issued and sold in accordance with the act and which sets the terms of such bonds;

(2) Joint project means a project financed and operated by at least two or more qualified public agencies cooperating as a joint entity or joint public agency for (a) any public building or buildings and related improvements to real estate, including parking facilities, any recreational facilities and related improvements to real estate, any flood control and storm water drainage, and any street and road construction and improvements and related fixtures and (b) any item of hardware or software used in providing for the delivery of information, including the purchasing of upgrades or related improvements to information technology for the operation of libraries operated by counties, municipalities, school districts, educational service units, and community colleges; and

(3) Qualified public agency means any city, village, municipal county, community college, county, educational service unit, rural or suburban fire protection district, hospital district, school district, and sanitary and improvement district.

**Source:** Laws 2005, LB 217, § 3.

**72-2304 Bonds authorized; public hearing; notice; election, when required; remonstrance petition.**

(1)(a) This section applies to bonds issued prior to April 18, 2018.

(b) In addition to any other borrowing powers provided for by law, a qualified public agency shall have the power to issue its negotiable bonds to any

joint entity as defined in section 13-803 or to any joint public agency as defined in section 13-2503 in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of the qualified public agency. The bonds may be issued only if the second-largest participant in the joint project has a financial contribution in the joint project of at least twenty-five percent of the debt service. Such bonds may be issued after the qualified public agency has conducted a public hearing on the issuance of bonds. Notice of such public hearing shall be given by publication in a newspaper of general circulation within the territory of the qualified public agency by at least one publication occurring not less than ten days prior to the time of hearing. After the public hearing, the governing body of the qualified public agency may proceed to adopt a bond measure authorizing bonds.

(2) Notice of any such bond measure shall be given by publication of notice of intention to issue bonds in a newspaper of general circulation within the territory of the qualified public agency at least twice after the adoption of the bond measure. Such publications shall be at least three weeks apart. The notice shall state:

- (a) The name of the qualified public agency;
- (b) The purpose of the issue;
- (c) The principal amount of the issue;
- (d) The amount of annual debt service payment anticipated for the bonds, which may be stated as an approximation or estimate, and the anticipated duration for such debt service payments; and
- (e) The time and place where a copy of the form of the bond measure may be examined for a period of at least thirty days.

(3) For bonds issued prior to April 18, 2018, no election shall be required prior to the issuance of bonds under the Public Facilities Construction and Finance Act unless, within sixty days after the first publication of the notice of intention to issue bonds, a remonstrance petition against the issuance of bonds is filed with the clerk or secretary of the qualified public agency. Such remonstrance petition shall be signed by registered voters of the qualified public agency equal in number to at least five percent of the number of registered voters of the qualified public agency at the time the remonstrance petition is filed or at least the number of signatures listed in subsection (5) of this section for the applicable qualified public agency, whichever is less. If a remonstrance petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the qualified public agency at a general election or a special election called for the purpose of approving the bonds proposed to be issued. Any joint project for which bonds are issued in accordance with the procedures of the act shall not require any other approval or proceeding by the governing body or the voters of the qualified public agency.

(4) For bonds issued prior to April 18, 2018, no election shall be required for any qualified public agency not issuing bonds to participate in such joint project unless, within sixty days after the governing body of the qualified public agency adopts the measure approving the interlocal or cooperative agreement related to the joint project, a remonstrance petition is filed with the clerk or secretary of the qualified public agency. Such remonstrance petition shall be signed by registered voters of the qualified public agency equal in number to at least five percent of the number of registered voters of the qualified public

agency at the time the remonstrance petition is filed or at least the number of signatures listed in subsection (5) of this section for the applicable qualified public agency, whichever is less. If a remonstrance petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the qualified public agency at a general election or a special election called for the purpose of approving the interlocal or cooperative agreement related to the joint project.

(5) The chart in this subsection provides the alternative number of signatures of registered voters of a qualified public agency which may be used to submit a remonstrance petition under subsection (3) or (4) of this section. The classification of counties in section 23-1114.01 applies for purposes of this section.

Qualified Public Agency	Number of Signatures of Registered Voters
City of the Metropolitan Class	1500
City of the Primary Class	1000
City of the First Class	750
City of the Second Class	250
Villages	50
Municipal County	1500
Class 7 County	1500
Class 6 County	1000
Class 5 County	750
Class 4 County	500
Class 3 County	250
Class 2 County	100
Class 1 County	50
Class V School District	1500
Class IV School District	1000
Class III School District	500
Educational Service Unit	250
Community College Area	1500
Fire Protection District	500
Hospital District	500
Sanitary and Improvement District	500

**Source:** Laws 2005, LB 217, § 4; Laws 2018, LB377, § 7; Laws 2018, LB1000, § 4.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB377, section 7, with LB1000, section 4, to reflect all amendments.

**Note:** Changes made by LB1000 became effective April 18, 2018. Changes made by LB377 became operative January 1, 2019.

**72-2305 Public buildings, recreational facilities, drainage, streets, and roads; bonds; amount authorized.**

For joint projects described in subdivision (2)(a) of section 72-2303, the principal amount of bonds which may be issued by a qualified public agency under the Public Facilities Construction and Finance Act shall not exceed five million dollars as to the total principal amount of such bonds which may be outstanding at any time, and the annual amounts due by reason of such bonds from each qualified public agency shall not exceed five percent of the restricted funds of the obligated qualified public agency in the year prior to issuance. The principal amount of bonds of qualified public agencies in the aggregate issued for any one such joint project shall not exceed five million dollars.

**Source:** Laws 2005, LB 217, § 5.

**72-2306 Information technology for libraries; bonds; amount authorized.**

For joint projects described in subdivision (2)(b) of section 72-2303, the principal amount of bonds which may be issued by a qualified public agency under the Public Facilities Construction and Finance Act shall not exceed two hundred fifty thousand dollars for cities of the metropolitan and primary classes, one hundred thousand dollars for counties, cities of the first class, school districts, educational service units, and community colleges, and fifty thousand dollars for cities of the second class and villages, as to the total principal amount of such bonds which may be outstanding at any time, and the annual amounts due by reason of such bonds from each qualified public agency shall not exceed five percent of the restricted funds of the obligated qualified public agency in the year prior to issuance. The principal amount of bonds of a qualified public agency in the aggregate issued for any one such joint project shall not exceed two hundred and fifty thousand dollars for cities of the metropolitan and primary classes and one hundred thousand dollars for counties, cities of the first class, cities of the second class, villages, school districts, educational service units, and community colleges.

**Source:** Laws 2005, LB 217, § 6.

**72-2307 Taxes authorized.**

Any qualified public agency which has issued bonds in accordance with the Public Facilities Construction and Finance Act shall levy and collect taxes on all the taxable property within the territory of the qualified public agency, in addition to all other taxes, for the purpose of paying the principal and interest of such bonds as the principal and interest become due. Taxes levied for such purposes shall not be subject to the limitations in section 77-3442. The levying of taxes to pay such bonds for any county shall be subject to the constitutional limitation upon levying taxes by a county.

**Source:** Laws 2005, LB 217, § 7.

**72-2308 Act; how construed; bonds; applicability of other provisions.**

The Public Facilities Construction and Finance Act shall be independent of and in addition to any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and bonds may be issued under the act for any purpose authorized in the act even though other provisions of the laws of the State of Nebraska or provisions of home rule charters may provide for the issuance of bonds for the same or similar purposes. The act shall not be considered amendatory of or limited by any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and bonds may be issued under the act without complying with the restrictions or requirements of any other provisions of the laws of the State of Nebraska or without complying with the restrictions or requirements of home rule charters. Nothing in the act shall prohibit or limit the issuance of bonds in accordance with the provisions of other applicable laws of the State of Nebraska or of home rule charters if the governing body determines to issue such bonds under such other laws or charter, or otherwise limit the provisions of any home rule charter.

**Source:** Laws 2005, LB 217, § 8.

**72-2309 Bonds; election; notice.**

(1) In addition to any other borrowing powers provided for by law, a qualified public agency may issue its negotiable bonds subject to the terms and conditions set forth in the Public Facilities Construction and Finance Act to any joint entity as defined in section 13-803 or to any joint public agency as defined in section 13-2503 in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of the qualified public agency. The bonds may be issued only if the second-largest participant in the joint project has a financial contribution in the joint project of at least twenty-five percent of the debt service. No bonds shall be issued on or after April 18, 2018, until the question has been submitted to the qualified electors of each participating qualified public agency at an election called for that purpose as provided in this section and, within each participating qualified public agency, a majority of the qualified electors voting on the question within the participating qualified public agency voted in favor of issuing the same.

(2) Each participating qualified public agency shall give notice of the election at least fifty days prior to the election. The question of issuing bonds may be submitted at the statewide primary or general election. The election shall be conducted in accordance with the Election Act.

(3) The question of bond issues, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of such election.

**Source:** Laws 2018, LB1000, § 5.

Effective date April 18, 2018.

**Cross References**

**Election Act**, see section 32-101.

**72-2310 Qualified public agencies; statement; contents; certified under oath.**

Before the issuance of bonds pursuant to the Public Facilities Construction and Finance Act, the qualified public agencies participating in the bond measure shall make a written statement of all proceedings relative to the vote upon the issuance of such bonds and the notice of the election, the manner and time of giving notice, the question submitted, and the result of the canvass of the vote on the proposition pursuant to which it is proposed to issue such bonds, together with a full statement of the taxable valuation and the total bonded indebtedness of the qualified public agencies participating in the bond measure. Such statement shall be certified to under oath.

**Source:** Laws 2018, LB1000, § 6.

Effective date April 18, 2018.

**ARTICLE 24**

**FERGUSON HOUSE**

**Section**

72-2401. Ferguson House Fund; created; use; investment.

**72-2401 Ferguson House Fund; created; use; investment.**

The Ferguson House Fund is created. The fund shall be used by the Nebraska Environmental Trust Board only for the operation, administration, maintenance, restoration, and renovation of the Ferguson House and grounds. Revenue credited to the fund may consist of rental or other income related to the Ferguson House as well as gifts, grants, and bequests. Any money in the fund

available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 2005, LB 426, § 8.

**Cross References**

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

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

**ARTICLE 25**

**NEBRASKA INCENTIVES FUND**

Section

72-2501. Nebraska Incentives Fund; created; investment.

**72-2501 Nebraska Incentives Fund; created; investment.**

The Nebraska Incentives Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Incentives 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 2008, LB914, § 24; Laws 2009, First Spec. Sess., LB3, § 51.

**Cross References**

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

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





## CHAPTER 73

### PUBLIC LETTINGS AND CONTRACTS

#### Article.

1. Public Lettings. 73-101 to 73-107.
2. Public Contracts.
  - (a) Contingent Fee Contracts. 73-201 to 73-204.
  - (b) Technology Access Clause. 73-205.
3. Contracts for Personal Services. 73-301 to 73-307.
4. Health and Human Services Contracts. 73-401.
5. State Contracts for Services. 73-501 to 73-510.
6. Transparency in Government Procurement Act. 73-601 to 73-605.

#### Cross References

**County Purchasing Act**, see section 23-3101.

**State agencies**, bidding procedures, see sections 81-145 to 81-162 and 81-1118 to 81-1118.07.

### ARTICLE 1

#### PUBLIC LETTINGS

#### Cross References

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

#### Section

- |            |  |
|------------|--|
| 73-101.    | Public lettings; how conducted.  |
| 73-101.01. | Resident bidder, defined; preference.  |
| 73-101.02. | Resident bidder; preference; exception.  |
| 73-102.    | Fair labor standards; statement of compliance required.  |
| 73-103.    | Fair labor standards; low bidder; disqualification.  |
| 73-104.    | Fair labor standards, defined.   |
| 73-105.    | Violations; penalties.   |
| 73-106.    | School district; construction, remodeling, or repair of building; advertise for bids; applicability.   |
| 73-107.    | Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void. |

#### **73-101 Public lettings; how conducted.**

Whenever the State of Nebraska, or any department or any agency thereof, any county board, county clerk, county highway superintendent, the mayor and city council or commissioner of any municipality, any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, or the officers of any school district, township, or other governmental subdivision, shall advertise for bids in pursuance of any statutes of the State of Nebraska, on any road contract work or any public improvements work, or for supplies, construction, repairs, and improvements, and in all other cases where bids for supplies or work, of any character whatsoever, are received for the various departments and agencies of the state, and other subdivisions and agencies enumerated in this section, they shall fix not only the day upon which such bids shall be returned, received, or opened, as provided by other statutes, but shall also fix the hour at which such bids shall close, or be received or opened, and they shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders, when the hour is

reached for the bids to close. If bids are being opened on more than one contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened. Sections 73-101 to 73-106 shall not apply to the State Park System Construction Alternatives Act or sections 39-2808 to 39-2823.

**Source:** Laws 1923, c. 131, § 1, p. 324; C.S.1929, § 73-101; Laws 1935, c. 145, § 1, p. 539; C.S.Supp.,1941, § 73-101; R.S.1943, § 73-101; Laws 1959, c. 181, § 18, p. 662; Laws 1999, LB 87, § 84; Laws 2016, LB960, § 28; Laws 2018, LB775, § 34.  
Effective date July 19, 2018.

#### Cross References

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

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

**State Park System Construction Alternatives Act**, see section 37-1701.

City ordinance requiring payment of minimum wage on public contracts did not implement statute. *Philson v. City of Omaha*, 167 Neb. 360, 93 N.W.2d 13 (1958).

#### **73-101.01 Resident bidder, defined; preference.**

When a public contract is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference over a nonresident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. Resident bidder as used in sections 73-101.01 and 73-101.02 shall mean any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced or has had a bona fide establishment for doing business within this state for the length of time established by the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced. Any contract entered into without compliance with sections 73-101.01 and 73-101.02 shall be null and void.

**Source:** Laws 1967, c. 471, § 1, p. 1465; Laws 1993, LB 121, § 462.

#### **73-101.02 Resident bidder; preference; exception.**

The provisions of section 73-101.01 shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of sections 73-101.01 and 73-101.02.

**Source:** Laws 1967, c. 471, § 2, p. 1466.

#### **73-102 Fair labor standards; statement of compliance required.**

All governing authorities of the State of Nebraska, and governmental subdivisions thereof, and every person acting as purchasing agent for the State of Nebraska, or any governmental subdivision thereof, shall, in awarding contracts for public works, require all contractors bidding on public works to file with such authority a statement that he is complying with, and will continue to comply with, fair labor standards in the pursuit of his business and in the execution of the contract on which he is bidding. The governing authorities

shall also require to be written into each and every contract for public works, in addition to such other provisions as are necessary and prescribed by law, a provision that in the execution of such contract fair labor standards shall be maintained; *Provided*, no agency or department of the State of Nebraska shall make any requirements, because of the provisions of sections 73-101 to 73-104, that will increase the cost to the state of merchandise, materials, supplies or services. This section shall not apply to such governing authorities that prescribe, in the terms of their contracts for public works, provisions governing the hours of labor, rates of pay, and conditions of employment.

**Source:** Laws 1939, c. 55, § 1, p. 227; C.S.Supp.,1941, § 73-102; R.S. 1943, § 73-102.

Fair Labor Standards Act is a general law of statewide application. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

### **73-103 Fair labor standards; low bidder; disqualification.**

A showing in a public hearing by interested parties, to the satisfaction of the awarding authority, that any contractor bidding upon public works, and having filed the statement as required by section 73-102, has not complied with fair labor standards in the pursuit of his business or occupation, shall be the basis for the disqualification of the low bid, in which case the awarding authority shall let the bid to the next lowest responsible bidder.

**Source:** Laws 1939, c. 55, § 2, p. 227; C.S.Supp.,1941, § 73-103; R.S. 1943, § 73-103.

Lowest money bid may not always constitute lowest responsible bid. *Day v. City of Beatrice*, 169 Neb. 858, 101 N.W.2d 481 (1960).

### **73-104 Fair labor standards, defined.**

Fair labor standards, as used in sections 73-102 and 73-103 shall be construed to mean such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the contractor filing such statement.

**Source:** Laws 1939, c. 55, § 2, p. 227; C.S.Supp.,1941, § 73-103; R.S. 1943, § 73-104.

Provision for payment of a sum no less than going wage is a proper fair labor standard, while payment of fixed sum irrespective of going wage is not. *Philson v. City of Omaha*, 167 Neb. 360, 93 N.W.2d 13 (1958).

Home rule charter controlled contract for improvement of water system. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

### **73-105 Violations; penalties.**

Any officer or person who may be in charge of any such bids prior to the time fixed for the simultaneous opening, who shall open prior to such time, or otherwise disclose to any bidder the contents, amount or other details of any rival bid, shall be guilty of a Class IV misdemeanor. Any person violating any of the provisions of sections 73-101 to 73-104 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1923, c. 131, § 1, p. 324; C.S.1929, § 73-101; Laws 1935, c. 145, § 1, p. 539; C.S.Supp.,1941, § 73-101; R.S.1943, § 73-105; Laws 1977, LB 39, § 181.

Effect of penalty raised but not decided. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

**73-106 School district; construction, remodeling, or repair of building; advertise for bids; applicability.**

(1) Whenever any public school district in the state expends public funds for the construction, remodeling, or repair of any school-owned building or for site improvements, other than those expenditures authorized by section 81-829.51 for emergency expenditures or section 79-10,104 for facilities which are not to be owned by the district following their completion, the school board or its representative shall advertise for bids in the regular manner established by the board and accept or reject bids pursuant to section 73-101.

(2) This section does not apply to any construction, remodeling, or repair of any school-owned building or site improvements in which the contemplated expenditure for the complete project does not exceed one hundred thousand dollars. The State Board of Education shall adjust the dollar amount in this subsection every fifth year. The first such adjustment after August 30, 2015, shall be effective on July 1, 2020. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount.

(3) This section does not apply to the acquisition of existing buildings, purchase of new sites, or site expansions by the school district.

**Source:** Laws 1979, LB 130, § 1; Laws 1981, LB 218, § 2; Laws 1996, LB 900, § 1061; Laws 2001, LB 420, § 34; Laws 2015, LB283, § 2; Laws 2015, LB431, § 1.

**73-107 Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void.**

(1) When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder if all other factors are equal.

(2) For purposes of this section, resident disabled veteran means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

(3) Any contract entered into without compliance with this section shall be null and void.

**Source:** Laws 2013, LB224, § 1.

Cross References

Enterprise Zone Act, see section 13-2101.01.

ARTICLE 2  
PUBLIC CONTRACTS

(a) CONTINGENT FEE CONTRACTS

Section

- 73-201. Legislative findings.
- 73-202. Terms, defined.
- 73-203. Contingent fee contract; executed by state; void; exception.
- 73-204. Contingent fee contract; executed by constitutional agency; void; exception.

(b) TECHNOLOGY ACCESS CLAUSE

- 73-205. Technology access clause; requirements.

(a) CONTINGENT FEE CONTRACTS

**73-201 Legislative findings.**

The Legislature finds that:

- (1) Article IV, section 6, of the Constitution of Nebraska requires that the affairs of the state be economically and efficiently administered and thereby imposes a duty to expend no more for any service than it is worth;
- (2) The types and provisions of contracts executed on behalf of the state have a direct bearing on the economical and efficient administration of the affairs of the state; and
- (3) Fee-for-service contracts are the usual, customary, and accepted manner of contracting on behalf of the state.

**Source:** Laws 1995, LB 519, § 1.

**73-202 Terms, defined.**

For purposes of sections 73-201 to 73-204:

- (1) Contingent fee means any fee, whether commission, percentage, brokerage, finder’s fee, or contingent fee or otherwise denominated, which is a percentage or portion of the amount or value recovered, obtained, or involved;
- (2) Contingent fee contract means any contract or agreement which provides for payment of a contingent fee; and
- (3) State means any department or agency of the state other than (a) the University of Nebraska, (b) the Nebraska state colleges, and (c) any other board, commission, or agency established by the Constitution of Nebraska.

**Source:** Laws 1995, LB 519, § 4.

**73-203 Contingent fee contract; executed by state; void; exception.**

Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by the state or by any person on behalf of the state after September 9, 1995, is void unless executed by the Governor upon thirty days’ notice to the public at large.

**Source:** Laws 1995, LB 519, § 2.

**73-204 Contingent fee contract; executed by constitutional agency; void; exception.**

Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by (1) the University of Nebraska, (2) the Nebraska state colleges, or (3) any other board, commission, or agency established by the Constitution of Nebraska after September 9, 1995, is void unless executed by the highest executive officer thereof upon thirty days' notice to the public at large.

**Source:** Laws 1995, LB 519, § 3.

## (b) TECHNOLOGY ACCESS CLAUSE

**73-205 Technology access clause; requirements.**

(1) The Commission for the Blind and Visually Impaired, the Nebraska Information Technology Commission, and the Chief Information Officer, in consultation with other state agencies and after at least one public hearing, shall develop a technology access clause to be included in all contracts entered into by state agencies on and after January 1, 2001.

(2) The technology access clause shall clearly state, as a condition for the expenditure of state funds in the purchase of information technology, that the input and output technology shall be capable of supporting modification and otherwise provide for equivalent access for both visual and nonvisual use.

(3) The technology access clause shall be included in all contracts made by state agencies that involve the purchase of an automated information system, without regard to:

- (a) The source of funds used to make the purchase;
- (b) Whether the purchase is made under delegated purchasing authority; or
- (c) The source of law under which the purchase is made.

**Source:** Laws 2000, LB 352, § 19.

**ARTICLE 3****CONTRACTS FOR PERSONAL SERVICES**

## Section

- 73-301. Director of Administrative Services; duties.
- 73-302. State agency; duties.
- 73-303. State agency; displaced state employees; plan of assistance.
- 73-304. Director of Administrative Services; approve contract; when.
- 73-305. Director of Administrative Services; report required.
- 73-306. Rules and regulations.
- 73-307. Sections; applicability; how construed.

**73-301 Director of Administrative Services; duties.**

The Director of Administrative Services shall review and approve or disapprove any contract for personal services between a private entity and any state agency, other than (1) the University of Nebraska, (2) the Nebraska state colleges, and (3) any other board, commission, or agency established by the Constitution of Nebraska, if, on the effective date of the contract, the personal services are performed by permanent state employees of the agency and will be

replaced by services performed by the private entity. The contract shall be subject to the public bidding procedures established in sections 81-145 to 81-162 except in emergencies approved by the Governor.

For purposes of this section, contract for personal services means an agreement by a contractor to provide human labor but does not mean a contract to supply only goods or personal property. The term includes contracts with private service providers, consultants, and independent service contractors.

**Source:** Laws 1995, LB 519, § 5.

#### **73-302 State agency; duties.**

(1) A state agency that seeks to enter into a contract described in section 73-301 with a private entity shall submit the following information to the Director of Administrative Services: (a) The proposed contract, (b) a review of the long-term actual cost savings, (c) the measurable goals for improving the quality of the service, and (d) an assessment of the feasibility of alternatives within the agency to contracting for performance of the service.

(2) In calculating the cost savings under subsection (1) of this section, the state agency shall project, for twelve months and for sixty months, the following:

(a) Direct costs, including salary and fringe benefits;

(b) Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;

(c) Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and

(d) Additional costs of performance of the work by state employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.

**Source:** Laws 1995, LB 519, § 6.

#### **73-303 State agency; displaced state employees; plan of assistance.**

A state agency that seeks to enter into a contract described in section 73-301 shall also submit to the Director of Administrative Services a formal plan of assistance to the state employees of such state agency who will be displaced by such contract. The plan shall include, but need not be limited to, the following provisions:

(1) Efforts by the state agency to place displaced employees in vacant positions in that agency or another state agency;

(2) Provisions in the contract for personal services, if feasible, for the hiring of displaced employees by the contractor; and

(3) Demonstration by the state agency that it has taken formal and positive steps in considering alternatives to such contract, including reorganization, reevaluation of service, and reevaluation of performance.

**Source:** Laws 1995, LB 519, § 7.

**73-304 Director of Administrative Services; approve contract; when.**

The Director of Administrative Services may approve a proposed contract if:

- (1) The potential economic advantage of contracting is not outweighed by the public's interest in having the particular services performed directly by the state agency;
- (2) The contract does not adversely affect the state's affirmative action efforts;
- (3) The contract will include adequate control mechanisms to insure that the services are provided pursuant to the terms of the contract; and
- (4) The private entity is fairly compensating its employees.

**Source:** Laws 1995, LB 519, § 8.

**73-305 Director of Administrative Services; report required.**

The Director of Administrative Services shall, within forty-five days after receipt of the information described in sections 73-302 and 73-303 from the state agency, prepare a report detailing why the proposed contract was approved or disapproved. The report shall be delivered electronically to the chairperson of the Appropriations Committee of the Legislature and the Legislative Fiscal Analyst.

**Source:** Laws 1995, LB 519, § 9; Laws 2012, LB782, § 133.

**73-306 Rules and regulations.**

The Department of Administrative Services shall adopt and promulgate rules and regulations to carry out sections 73-301 to 73-305. Such rules and regulations shall apply to the Director of Administrative Services in carrying out his or her duties pursuant to such sections.

**Source:** Laws 1995, LB 519, § 10.

**73-307 Sections; applicability; how construed.**

Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act, the State Park System Construction Alternatives Act, sections 39-2808 to 39-2823, or section 57-1503.

Sections 73-301 to 73-306 shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

**Source:** Laws 1995, LB 519, § 11; Laws 2011, First Spec. Sess., LB4, § 4; Laws 2016, LB960, § 29; Laws 2018, LB775, § 35.  
Effective date July 19, 2018.

**Cross References**

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.  
State Park System Construction Alternatives Act, see section 37-1701.



**ARTICLE 4**  
**HEALTH AND HUMAN SERVICES CONTRACTS**

## Section

73-401. Contract with state agency; Public Counsel; jurisdiction.

**73-401 Contract with state agency; Public Counsel; jurisdiction.**

Except for long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, the contracting agency shall ensure that any contract which a state agency enters into or renews which agrees that a corporation, partnership, business, firm, governmental entity, or person shall provide health and human services to individuals or service delivery, service coordination, or case management on behalf of the State of Nebraska shall contain a clause requiring the corporation, partnership, business, firm, governmental entity, or person to submit to the jurisdiction of the Public Counsel under sections 81-8,240 to 81-8,254 with respect to the provision of services under the contract.

**Source:** Laws 1997, LB 622, § 120; Laws 2012, LB821, § 40.

## Cross References

Long-Term Care Ombudsman Act, see section 81-2237.

**ARTICLE 5**  
**STATE CONTRACTS FOR SERVICES**

## Section

73-501. Purposes of sections.

73-502. Terms, defined.

73-503. Documentation; requirements.

73-504. Competitive bidding requirements.

73-505. State agency directors; duties.

73-506. State agency contracts for services; requirements.

73-507. Exceptions.

73-508. Preapproval; required; when.

73-509. Pre-process; required; when; procedure.

73-510. New proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.

**73-501 Purposes of sections.**

The purposes of sections 73-501 to 73-510 are to establish a standardized, open, and fair process for selection of contractual services, using performance-based contracting methods to the maximum extent practicable, and to create an accurate reporting of expended funds for contractual services. This process shall promote a standardized method of selection for state contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There shall also be an accountable, efficient reporting method of expenditures for these services.

**Source:** Laws 2003, LB 626, § 1; Laws 2012, LB858, § 5.

**73-502 Terms, defined.**

For purposes of sections 73-501 to 73-510:

(1) Contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study, or report rather than to furnish an end item of supply, goods, equipment, or material;

(2) Division means the materiel division of the Department of Administrative Services;

(3) Emergency means necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(4) Occasional means seasonal, irregular, or fluctuating in nature;

(5) Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;

(6) State agency means any agency, board, or commission of this state other than the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or any officer or state agency established by the Constitution of Nebraska; and

(7) Temporary means a finite period of time with respect to a specific task or result relating to a contract for services.

**Source:** Laws 2003, LB 626, § 2; Laws 2012, LB858, § 6.

#### **73-503 Documentation; requirements.**

(1) All state agencies shall process and document all contracts for services through the state accounting system. The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.

(2) The requirements of this section also apply to the courts, the Legislature, and any officer or state agency established by the Constitution of Nebraska, but not to the University of Nebraska.

(3) The Nebraska state colleges shall document all contracts for services through the state accounting system.

(4) The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.

**Source:** Laws 2003, LB 626, § 3; Laws 2012, LB858, § 7.

#### **73-504 Competitive bidding requirements.**

Except as provided in section 73-507:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section for contracts for services. Unless otherwise exempt, no state agency shall expend funds for contracts for services without complying with this section;

(2) All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the division procurement manual or a process approved by the Director of Administrative Services. Bidding may be performed at the state agency level or by the division. Any state agency may request that the division conduct the competitive bidding process;

(3) If the bidding process is at the state agency level, then state agency directors shall ensure that bid documents for each contract for services in excess of fifty thousand dollars are prereviewed by the division and that any changes to the proposed contract that differ from the bid documents in the proposed contract for services are reviewed by the division before signature by the parties;

(4) State agency directors, in cooperation with the division, shall be responsible for appropriate public notice of an impending contractual services project in excess of fifty thousand dollars in accordance with the division's procurement manual and sections 73-501 to 73-510; and

(5) State agency directors, in cooperation with the division, shall be responsible for ensuring that a request for contractual services in excess of fifty thousand dollars is filed with the division for dissemination or web site access to vendors interested in competing for contracts for services.

**Source:** Laws 2003, LB 626, § 4; Laws 2012, LB858, § 8.

#### **73-505 State agency directors; duties.**

State agency directors shall be responsible for maintaining accurate documentation of the process used for selection of all contracts for services and for ensuring and documenting that services required under the contract are being performed in compliance with the terms of the contract for services. Such documentation shall be kept with each contract for services.

**Source:** Laws 2003, LB 626, § 5.

#### **73-506 State agency contracts for services; requirements.**

State agency contracts for services shall be subject to the following requirements:

(1) Payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions;

(2) State agencies shall not enter into contracts for services with an unspecified or unlimited duration, and no contract for services shall be amended to extend the duration of the contract for a period of more than fifty percent of the initial contract term. Following the adoption of any amendment to extend the contract for a period of fifty percent or less of the initial contract term, no further extensions of the original contract shall be permitted. This subdivision does not prohibit the exercise of any renewal option expressly provided in the original contract;

(3) State agencies shall not structure contracts for services to avoid any of the requirements of sections 73-501 to 73-510; and

(4) State agencies shall not enter into contracts for services in excess of fifteen million dollars unless the state agency has complied with section 73-510.

**Source:** Laws 2003, LB 626, § 6; Laws 2012, LB858, § 9; Laws 2017, LB151, § 5.

**73-507 Exceptions.**

(1) Subject to review by the Director of Administrative Services, the division shall provide procedures to grant limited exceptions from sections 73-504, 73-508, and 73-509 for:

(a) Sole source contracts, emergency contracts, and contracts for services when the price has been established by the federal General Services Administration or competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states; and

(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, 73-509, and 73-510:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with a value of fifteen million dollars or less with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or state agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Transportation contracts for all road and bridge projects;

(j) Nebraska Investment Council contracts; and

(k) Contracts under section 57-1503.

**Source:** Laws 2003, LB 626, § 7; Laws 2011, First Spec. Sess., LB4, § 5; Laws 2012, LB858, § 10; Laws 2014, LB974, § 1; Laws 2017, LB339, § 250.

**Cross References**

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

**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 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 state 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 state 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; Laws 2012, LB858, § 11.

**73-509 Pre-process; required; when; procedure.**

Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state employee covered by the classified personnel system or by any labor contract shall use a pre-process prescribed by the division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.

**Source:** Laws 2003, LB 626, § 9; Laws 2012, LB858, § 12.

**73-510 New proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.**

(1) A state agency shall not enter into a new proposed contract for services in excess of fifteen million dollars until the state agency has submitted to the division a copy of the proposed contract and proof-of-need analysis described in this section and has subsequently received certification from the division to enter into the contract.

(2) The proof-of-need analysis shall require state agencies to provide the following information:

- (a) A description of the service that is the subject of the proposed contract;
- (b) The reason for purchase of the service rather than the use or hiring of state employees, including, but not limited to, whether there is an administrative restriction on hiring additional state employees;
- (c) A review of any long-term actual cost savings of the contract and an explanation of the analysis used to determine such savings;
- (d) An explanation of the process by which the state agency will include adequate control mechanisms to ensure that the services are provided pursuant to the terms of the contract, including a description of the method by which the control mechanisms will ensure the quality of services provided by the contract;
- (e) Identification of the specific state agency employee who will monitor the contract for services for performance;

(f) Identification and description of whether the service requested is temporary or occasional;

(g) An assessment of the feasibility of alternatives within the state agency to contract for performance of the services;

(h) A justification for entering into the contract for services if:

(i) The proposed contract will not result in cost savings to the state; and

(ii) The public's interest in having the particular service performed directly by the state agency exceeds the public's interest in the proposed contract;

(i) Any federal requirements that the service be provided by a person other than the state agency;

(j) Demonstration by the state agency that it has taken formal and positive steps to consider alternatives to such contract, including reorganization, reevaluation of services, and reevaluation of performance; and

(k) A description of any relevant legal issues, including barriers to contracting for the service or requirements that the state agency contract for the service.

(3) The division shall certify receipt of a proof-of-need analysis and shall report its receipt of the proof-of-need analysis to the state agency no more than thirty days after receiving the analysis. Certification of the proof-of-need analysis means that all information required by this section has been provided to the division by the state agency. If the division certifies the analysis, the state agency may enter into the proposed contract. If the division does not certify the analysis, it shall inform the state agency of the additional information required.

(4) If the division certifies a proof-of-need analysis pursuant to this section, the state agency shall file the proposed contract, proof-of-need analysis, and proof of certification with the Legislative Fiscal Analyst.

**Source:** Laws 2012, LB858, § 13; Laws 2013, LB563, § 1.

## ARTICLE 6

### TRANSPARENCY IN GOVERNMENT PROCUREMENT ACT

#### Section

73-601. Act, how cited.

73-602. Legislative findings and declaration.

73-603. Department of Administrative Services; report; contents.

73-604. Certain contracts; contractor; provide information.

73-605. Act; applicability.

#### **73-601 Act, how cited.**

Sections 73-601 to 73-605 shall be known and may be cited as the Transparency in Government Procurement Act.

**Source:** Laws 2014, LB371, § 1.

#### **73-602 Legislative findings and declaration.**

(1) The Legislature finds that:

(a) Transparency in public procurement is an important tool to deter corruption and to maintain the public's trust in government contracting;

(b) Taxpayers deserve to know how and where their tax dollars are being spent;

(c) The economy and general welfare of this state and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing industries in this state, as well as all the other states of this nation; and

(d) Recognizing such link, it should be the policy of this state that, whenever possible, taxpayer dollars be reinvested with its individual and employer taxpayers in order to foster job retention and growth and to ensure a broad and healthy tax base for future investments vital to the state's infrastructure.

(2) The Legislature declares that it shall be the policy of this state that the Department of Administrative Services shall quantify the portion of its procurement spending that is reinvested with taxpayers in this state and the nation.

**Source:** Laws 2014, LB371, § 2.

**73-603 Department of Administrative Services; report; contents.**

(1) The Department of Administrative Services shall create an annual report that includes:

(a) The total number and value of contracts awarded by the department;

(b) The total number and value of contracts awarded by the department to contractors within this state;

(c) The total number and value of contracts awarded by the department to foreign contractors; and

(d) The total number of contracts awarded by the department for which a preference was given under section 73-101.01.

(2) The first such report created pursuant to subsection (1) of this section shall be submitted to the Governor and the Legislature on or before September 1, 2015, and shall include the information specified in such subsection from FY2014-15. Subsequent reports shall be submitted on or before September 1 each year thereafter and shall include the required information from the most recent fiscal year ending prior to such date. The reports submitted to the Legislature and the Governor shall be submitted electronically. Each annual report shall be made available to the public through publication on the department's web site on or before September 1 of each year.

**Source:** Laws 2014, LB371, § 3.

**73-604 Certain contracts; contractor; provide information.**

Beginning on July 1, 2014, each contract awarded by the Department of Administrative Services shall require that the contractors provide to the department any and all information needed for compliance with section 73-603.

**Source:** Laws 2014, LB371, § 4.

**73-605 Act; applicability.**

The Transparency in Government Procurement Act applies only to contracts awarded by the Department of Administrative Services on and after July 1, 2014, and does not apply to the Office of the Nebraska Capitol Commission.

**Source:** Laws 2014, LB371, § 5.





## RAILROADS

# CHAPTER 74 RAILROADS

### Article.

1. Incorporation. Repealed.
2. Public Offices. Repealed.
3. Acquisition of Real Estate. 74-301 to 74-329.
4. Purchase, Lease, or Consolidation of Lines. Transferred or Repealed.
5. Operation. 74-501 to 74-5,103.
6. Fencing and Mowing Right-of-Way. 74-601 to 74-614.
7. Liability to Employees, Shippers, and Passengers. Transferred or Repealed.
8. Rates and Fares. Repealed.
9. Safety of Employees and Passengers. 74-901 to 74-925.
10. Freight. Repealed.
11. Street Railways. Repealed.
12. Claims against Common Carriers. Repealed.
13. Railroad Safety.
  - (a) Railroad Transportation Safety District. 74-1301 to 74-1309.
  - (b) Railroad Crossings. 74-1310 to 74-1323.
  - (c) Nebraska Highway-Rail Crossing Safety Committee. 74-1324 to 74-1328. Repealed.
  - (d) Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. 74-1329 to 74-1343.
14. Light-Density Rail Lines. 74-1401 to 74-1429.
15. Nebraska Transit and Rail Advisory Council Act. Repealed.
16. Midwest Interstate Passenger Rail Compact. Repealed.

### Cross References

#### Constitutional provisions:

- Capital stock, not increased except upon notice and as provided by law, see Article X, section 5, Constitution of Nebraska.
- Consolidation, permit from Public Service Commission required, see Article X, section 3, Constitution of Nebraska.
- Discrimination and extortion, Legislature may prevent, see Article X, section 7, Constitution of Nebraska.
- Dividends, payable only out of earnings, see Article X, section 5, Constitution of Nebraska.
- Eminent domain:
  - Just compensation, see Article I, section 21, Constitution of Nebraska.
  - Must become Nebraska corporation before exercising, see Article X, section 8, Constitution of Nebraska.
  - Property and franchises of railroad companies taken for public necessity, see Article X, section 6, Constitution of Nebraska.
- Liability, see Article X, section 4, Constitution of Nebraska.
- Local or special legislation granting right to lay down tracks or amend charters prohibited, see Article III, section 18, Constitution of Nebraska.
- Maximum rates, Legislature may fix, see Article X, section 4, Constitution of Nebraska.
- Physical connection or joint use, may be required by law, see Article X, section 3, Constitution of Nebraska.
- Public highways, railroads are, see Article X, section 4, Constitution of Nebraska.
- Reports under oath, see Article X, section 1, Constitution of Nebraska.
- Rolling stock and movables, not exempt from execution, see Article X, section 2, Constitution of Nebraska.
- State land, donation prohibited, see Article III, section 21, Constitution of Nebraska.
- Subscriptions to stock, political subdivisions must not make, see Article XI, section 1, Constitution of Nebraska.

#### Actions against railroads:

- Attorney's fees, recovery allowed, when, see section 25-1801.
- By employees, assumption of risk, no defense, see section 25-21,184.
- Damages for trespass or injury to real property, see section 25-401.

#### Agricultural Suppliers Lease Protection Act, see section 2-5501.

#### Anhydrous ammonia, unlawful transportation, see section 28-1240.

#### Bee husbandry, shipping regulations relative to, see sections 81-2,170 to 81-2,173.

#### Blocking crossings:

- Liability, see section 74-594.
- Penalty, see section 17-225.

#### Cattle, removal from brand inspection area, see section 54-1,115.

#### Cigarettes, bonded carriers of, requirements, see sections 77-2621 and 77-2622.

#### Civil rights, see section 20-127.

#### Counties and municipalities, internal improvement bonds for aid in railroad construction, see sections 10-401 to 10-406 and 10-607 et seq.

## § 74-101

## RAILROADS

**County road grade crossings**, elimination by county board, see section 39-1730.

**Crimes and offenses:**

Criminal mischief, see section 28-519.

Theft of services, see section 28-515.

Transporting products of violators of anti-rebating laws, see section 59-818.

Unauthorized application of graffiti, see section 28-524.

Unclean stock cars, see section 28-1306.

Use of justifiable force, see section 28-1413.

Venue for prosecution of offenses committed on trains, see section 29-1301.02.

**Dead human bodies**, requirements for shipment of, see sections 71-605 and 71-1004.

**Donations by counties**, election requirements for, see section 10-105.

**Drainage**, see Chapter 31.

**Embankments**, permits to destroy animals damaging, see section 37-461.

**Eminent domain procedure**, see sections 25-2501 to 25-2506 and Chapter 76, article 7.

**Explosive materials**, permit to transport required, see section 28-1235.

**Fish and game**, shipments of, see section 37-510.

**Fur**, shipments of raw, see section 37-512.

**Game and Parks Commission**, acquire right-of-way, see sections 37-912, 37-914, 37-1011 et seq., and 81-2801.

**Industrial disputes**, jurisdiction of Commission of Industrial Relations, see Chapter 48, article 8.

**Intersections between railroads and highways**, see section 75-702 et seq.

**Irrigation works**, construction across railways, see section 46-153.

**Issuance of securities**, consolidation, see sections 75-146 to 75-151.

**Labor or material liens**, see sections 52-115 to 52-117.

**Landmarks and corners**, see sections 34-201 and 34-202.

**Leases with agricultural suppliers**, Agricultural Suppliers Lease Protection Act, see section 2-5501.

**Liquors:**

Railroad licenses, see sections 53-123.05 and 53-191.

Transportation of, see section 53-192 et seq.

**Motor vehicle fuels**, carriers' reports, see section 66-525.

**Municipalities, regulatory powers of:**

Cities of the first class, see sections 16-211 and 16-212.

Cities of the metropolitan class, see section 14-102.

Cities of the primary class, see sections 15-209 and 15-261.

Cities of the second class and villages, see sections 17-143, 17-144, 17-551, 17-552, and 17-561.

Weeds, removal from right-of-way, see section 18-1719.

**Nursery stock**, Plant Protection and Plant Pest Act, see section 2-1072.

**Political contributions**, when prohibited, see section 14-225 and the Nebraska Political Accountability and Disclosure Act, see section 49-1401.

**Public Service Commission**, jurisdiction and powers of, see Chapter 75, article 4.

**Radioactive waste**, shipping, fees, see section 71-3525.

**Rates, charges, and tariffs**, see sections 75-118 to 75-127.

**Real property for construction and operation of railroads**, aliens and foreign corporations may own, see section 76-412.

**Rebates**, granting or receiving prohibited, see section 59-818.

**Right-of-way**, acquisition by state agency, see section 81-2801.

**Security interests**, see section 76-1101 et seq.

**Sign or other device**, prohibited, when, see section 60-6,127.

**Streets**, paving between rails, requirements, see sections 16-625 and 17-521.

**Taxation of railroads**, assessment and equalization, see Chapter 77, article 6.

**Trails, recreational:**

Abandoned railroad rights-of-way, see sections 37-1010 to 37-1015.

Acquisition by Game and Parks Commission, see sections 37-912 and 37-914.

Trail Development Assistance Act, see section 37-1001.

**Viaducts and subways in municipalities**, see Chapter 18, article 6.

## ARTICLE 1

## INCORPORATION

### Section

74-101. Repealed. Laws 1994, LB 414, § 137.

74-102. Repealed. Laws 1994, LB 414, § 137.

74-103. Repealed. Laws 1994, LB 414, § 137.

74-104. Repealed. Laws 1994, LB 414, § 137.

74-105. Repealed. Laws 1994, LB 414, § 137.

74-106. Repealed. Laws 1994, LB 414, § 137.

74-107. Repealed. Laws 1994, LB 414, § 137.

74-108. Repealed. Laws 1994, LB 414, § 137.

74-109. Repealed. Laws 1994, LB 414, § 137.

74-110. Repealed. Laws 1994, LB 414, § 137.

74-111. Repealed. Laws 1994, LB 414, § 137.

### **74-101 Repealed. Laws 1994, LB 414, § 137.**

- 74-102 Repealed. Laws 1994, LB 414, § 137.**
- 74-103 Repealed. Laws 1994, LB 414, § 137.**
- 74-104 Repealed. Laws 1994, LB 414, § 137.**
- 74-105 Repealed. Laws 1994, LB 414, § 137.**
- 74-106 Repealed. Laws 1994, LB 414, § 137.**
- 74-107 Repealed. Laws 1994, LB 414, § 137.**
- 74-108 Repealed. Laws 1994, LB 414, § 137.**
- 74-109 Repealed. Laws 1994, LB 414, § 137.**
- 74-110 Repealed. Laws 1994, LB 414, § 137.**
- 74-111 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 2  
PUBLIC OFFICES**

Section

- 74-201. Repealed. Laws 1994, LB 414, § 137.
- 74-202. Repealed. Laws 1994, LB 414, § 137.
- 74-203. Repealed. Laws 1994, LB 414, § 137.
- 74-204. Repealed. Laws 1994, LB 414, § 137.

- 74-201 Repealed. Laws 1994, LB 414, § 137.**
- 74-202 Repealed. Laws 1994, LB 414, § 137.**
- 74-203 Repealed. Laws 1994, LB 414, § 137.**
- 74-204 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 3  
ACQUISITION OF REAL ESTATE**

Cross References

For eminent domain procedure, see sections 25-2501 to 25-2506 and Chapter 76, article 7.

Section

- 74-301. Repealed. Laws 1994, LB 414, § 137.
- 74-302. Repealed. Laws 1994, LB 414, § 137.
- 74-303. Repealed. Laws 1994, LB 414, § 137.
- 74-304. Repealed. Laws 1994, LB 414, § 137.
- 74-305. Repealed. Laws 1994, LB 414, § 137.
- 74-306. Repealed. Laws 1994, LB 414, § 137.
- 74-307. Roads, streams, or canals; crossings; conditions.
- 74-308. Real estate; acquisition; damages; procedure.
- 74-309. Repealed. Laws 1951, c. 101, § 127.
- 74-310. Repealed. Laws 1951, c. 101, § 127.
- 74-311. Repealed. Laws 1951, c. 101, § 127.
- 74-312. Repealed. Laws 1951, c. 101, § 127.
- 74-313. Repealed. Laws 1951, c. 101, § 127.
- 74-314. Repealed. Laws 1951, c. 101, § 127.
- 74-315. Repealed. Laws 1951, c. 101, § 127.
- 74-316. Repealed. Laws 1951, c. 101, § 127.

Section

- 74-317. Repealed. Laws 1951, c. 101, § 127.
- 74-318. Repealed. Laws 1951, c. 101, § 127.
- 74-319. Repealed. Laws 1951, c. 101, § 127.
- 74-320. Repealed. Laws 1951, c. 101, § 127.
- 74-321. Repealed. Laws 1951, c. 101, § 127.
- 74-322. Repealed. Laws 1951, c. 101, § 127.
- 74-323. Repealed. Laws 1994, LB 414, § 137.
- 74-324. Repealed. Laws 1951, c. 101, § 127.
- 74-325. Repealed. Laws 1951, c. 101, § 127.
- 74-326. Repealed. Laws 1951, c. 101, § 127.
- 74-327. Repealed. Laws 1994, LB 414, § 137.
- 74-328. Repealed. Laws 1994, LB 414, § 137.
- 74-329. Repealed. Laws 1951, c. 244, § 1.

**74-301 Repealed. Laws 1994, LB 414, § 137.**

**74-302 Repealed. Laws 1994, LB 414, § 137.**

**74-303 Repealed. Laws 1994, LB 414, § 137.**

**74-304 Repealed. Laws 1994, LB 414, § 137.**

**74-305 Repealed. Laws 1994, LB 414, § 137.**

**74-306 Repealed. Laws 1994, LB 414, § 137.**

**74-307 Roads, streams, or canals; crossings; conditions.**

Any railroad may construct and carry its tracks across, over, or under any road, railroad, canal, stream, or watercourse when it may be necessary in the construction thereof. In such cases, the railroad shall construct its railroad crossings so as to not unnecessarily impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or watercourse so crossed. The railroad may change the channel of any stream or watercourse whenever it may be necessary in the location, construction, or use of its road if it does not change the general course of the stream or watercourse or materially impair its usefulness.

**Source:** R.S.1866, c. 25, § 86, p. 219; R.S.1913, § 5944; C.S.1922, § 5282; C.S.1929, § 74-305; R.S.1943, § 74-307; Laws 1994, LB 414, § 2.

Omission of word necessary in instruction to jury was not prejudicial. *Sawyer v. Chicago, B. & Q. R. R. Co.*, 99 Neb. 294, 156 N.W. 504 (1916).

It is the duty of a railroad company when its right-of-way passes over a stream to so construct its roadbed as to carry off the waters of that stream. *Chicago, R. I. & P. Ry. Co. v. Andreesen*, 62 Neb. 456, 87 N.W. 167 (1901).

A railroad corporation, though authorized by law to construct its road across a stream, must do so with due regard for the

rights of adjacent landowners, and is liable for damage to adjacent land if its bridge is so constructed as to cause water and ice to gorge and overflow such land. *McCleneghan v. Omaha & R. V. R. R. Co.*, 25 Neb. 523, 41 N.W. 350 (1889), 13 A.S.R. 508 (1889).

Legislature may put the burden of repair of viaducts crossing several railroads upon one of the companies or apportion it among all as it sees fit. *Chicago, B. & Q. R. R. Co. v. State of Nebraska ex rel. City of Omaha*, 170 U.S. 57 (1898).

**74-308 Real estate; acquisition; damages; procedure.**

Any railroad may purchase and use real estate for a price to be agreed upon with the owners thereof and may acquire the same through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:** R.S.1866, c. 25, § 95, p. 223; R.S.1913, § 5945; C.S.1922, § 5283; C.S.1929, § 74-306; R.S.1943, § 74-308; Laws 1951, c. 101, § 113, p. 501; Laws 1994, LB 414, § 3.

Although railroads are private corporations, they have been given the statutory authority to acquire land through eminent domain. Railroads are required to exercise their eminent domain power in accordance with Nebraska's general eminent domain statutes, set forth at sections 76-701 to 76-726. Burlington Northern and Santa Fe Ry. Co. v. Chaulk, 262 Neb. 235, 631 N.W.2d 131 (2001).

An attempt to agree with owner is condition precedent to condemnation. Higgins v. Loup River Public Power Dist., 157 Neb. 652, 61 N.W.2d 213 (1953).

Taxation of costs in eminent domain proceedings by railroad company contrasted with procedure under other statutes. Kennedy v. Department of Roads & Irrigation, 150 Neb. 727, 35 N.W.2d 781 (1949).

The fact that negotiations for purchase of a tract of land failed because of disagreement is sufficient to show that the parties were unable to agree and to authorize ascertainment of damages by condemnation. Rogers v. Cosgrave, 98 Neb. 608, 153 N.W. 569 (1915).

The fact that by statute the railroad company may condemn land for a right-of-way if the parties are unable to agree will be considered with evidence tending to show that a contract for the purchase of such land is inequitable and not to be specifically enforced. Rice v. Lincoln & N. W. R. R. Co., 88 Neb. 307, 129 N.W. 425 (1911).

Statutory provisions for the ascertainment of damages to a landowner whose property is taken by eminent domain apply only when real estate is taken or appropriated by the railroad company. Republican V. R. R. Co. v. Fellers, 16 Neb. 169, 20 N.W. 217 (1884).

The mode provided for assessing damages for right-of-way does not apply where property is damaged but no portion thereof is taken. Burlington & M. R. R. Co. v. Reinhackle, 15 Neb. 279, 18 N.W. 69 (1883), 48 Am. R. 342 (1883).

Provisions of this section for ascertaining damages apply only where property is taken. Where property is damaged, relief must be sought in an action for damages. Omaha Horse Ry. Co. v. Cable Tram-Way Co. of Omaha, 32 F. 727 (Cir. Ct., D. Neb. 1887).

**74-309 Repealed. Laws 1951, c. 101, § 127.**

**74-310 Repealed. Laws 1951, c. 101, § 127.**

**74-311 Repealed. Laws 1951, c. 101, § 127.**

**74-312 Repealed. Laws 1951, c. 101, § 127.**

**74-313 Repealed. Laws 1951, c. 101, § 127.**

**74-314 Repealed. Laws 1951, c. 101, § 127.**

**74-315 Repealed. Laws 1951, c. 101, § 127.**

**74-316 Repealed. Laws 1951, c. 101, § 127.**

**74-317 Repealed. Laws 1951, c. 101, § 127.**

**74-318 Repealed. Laws 1951, c. 101, § 127.**

**74-319 Repealed. Laws 1951, c. 101, § 127.**

**74-320 Repealed. Laws 1951, c. 101, § 127.**

**74-321 Repealed. Laws 1951, c. 101, § 127.**

**74-322 Repealed. Laws 1951, c. 101, § 127.**

**74-323 Repealed. Laws 1994, LB 414, § 137.**

**74-324 Repealed. Laws 1951, c. 101, § 127.**

**74-325 Repealed. Laws 1951, c. 101, § 127.**

**74-326 Repealed. Laws 1951, c. 101, § 127.**

**74-327 Repealed. Laws 1994, LB 414, § 137.**

**74-328 Repealed. Laws 1994, LB 414, § 137.**

**74-329 Repealed. Laws 1951, c. 244, § 1.**

#### ARTICLE 4

#### PURCHASE, LEASE, OR CONSOLIDATION OF LINES

##### Section

- 74-401. Repealed. Laws 1994, LB 414, § 137.
- 74-402. Repealed. Laws 1994, LB 414, § 137.
- 74-403. Repealed. Laws 1994, LB 414, § 137.
- 74-404. Repealed. Laws 1994, LB 414, § 137.
- 74-405. Repealed. Laws 1994, LB 414, § 137.
- 74-406. Repealed. Laws 1994, LB 414, § 137.
- 74-407. Repealed. Laws 1994, LB 414, § 137.
- 74-408. Repealed. Laws 1994, LB 414, § 137.
- 74-409. Repealed. Laws 1994, LB 414, § 137.
- 74-410. Repealed. Laws 1994, LB 414, § 137.
- 74-411. Repealed. Laws 1994, LB 414, § 137.
- 74-412. Repealed. Laws 1994, LB 414, § 137.
- 74-413. Repealed. Laws 1994, LB 414, § 137.
- 74-414. Repealed. Laws 1994, LB 414, § 137.
- 74-415. Repealed. Laws 1994, LB 414, § 137.
- 74-416. Repealed. Laws 1994, LB 414, § 137.
- 74-417. Repealed. Laws 1994, LB 414, § 137.
- 74-418. Repealed. Laws 1994, LB 414, § 137.
- 74-419. Repealed. Laws 1994, LB 414, § 137.
- 74-420. Repealed. Laws 1994, LB 414, § 137.
- 74-421. Repealed. Laws 1994, LB 414, § 137.
- 74-422. Repealed. Laws 1994, LB 414, § 137.
- 74-423. Repealed. Laws 1994, LB 414, § 137.
- 74-424. Transferred to section 81-2801.

**74-401 Repealed. Laws 1994, LB 414, § 137.**

**74-402 Repealed. Laws 1994, LB 414, § 137.**

**74-403 Repealed. Laws 1994, LB 414, § 137.**

**74-404 Repealed. Laws 1994, LB 414, § 137.**

**74-405 Repealed. Laws 1994, LB 414, § 137.**

**74-406 Repealed. Laws 1994, LB 414, § 137.**

**74-407 Repealed. Laws 1994, LB 414, § 137.**

**74-408 Repealed. Laws 1994, LB 414, § 137.**

**74-409 Repealed. Laws 1994, LB 414, § 137.**

**74-410 Repealed. Laws 1994, LB 414, § 137.**

**74-411 Repealed. Laws 1994, LB 414, § 137.**

**74-412 Repealed. Laws 1994, LB 414, § 137.**

**74-413 Repealed. Laws 1994, LB 414, § 137.**

**74-414 Repealed. Laws 1994, LB 414, § 137.**

**74-415 Repealed. Laws 1994, LB 414, § 137.**

**74-416 Repealed. Laws 1994, LB 414, § 137.**

**74-417 Repealed. Laws 1994, LB 414, § 137.**

**74-418 Repealed. Laws 1994, LB 414, § 137.**

**74-419 Repealed. Laws 1994, LB 414, § 137.**

**74-420 Repealed. Laws 1994, LB 414, § 137.**

**74-421 Repealed. Laws 1994, LB 414, § 137.**

**74-422 Repealed. Laws 1994, LB 414, § 137.**

**74-423 Repealed. Laws 1994, LB 414, § 137.**

**74-424 Transferred to section 81-2801.**

## **ARTICLE 5 OPERATION**

### Section

74-501.	Repealed. Laws 1994, LB 414, § 137.
74-502.	Repealed. Laws 1994, LB 414, § 137.
74-503.	Repealed. Laws 1994, LB 414, § 137.
74-504.	Repealed. Laws 1994, LB 414, § 137.
74-505.	Repealed. Laws 1994, LB 414, § 137.
74-506.	Repealed. Laws 1994, LB 414, § 137.
74-507.	Repealed. Laws 1994, LB 414, § 137.
74-508.	Repealed. Laws 1994, LB 414, § 137.
74-509.	Repealed. Laws 1994, LB 414, § 137.
74-510.	Repealed. Laws 1994, LB 414, § 137.
74-511.	Repealed. Laws 1994, LB 414, § 137.
74-512.	Repealed. Laws 1994, LB 414, § 137.
74-513.	Repealed. Laws 1994, LB 414, § 137.
74-514.	Repealed. Laws 1994, LB 414, § 137.
74-515.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-516.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-517.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-518.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-519.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-520.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-521.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-522.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-523.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-524.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-525.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-526.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-527.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-528.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-529.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-530.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-531.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-532.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-533.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-534.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-535.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-536.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-537.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-538.	Repealed. Laws 1994, LB 414, § 137.
74-539.	Repealed. Laws 1994, LB 414, § 137.

## RAILROADS

Section	
74-540.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-541.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-542.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-543.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-544.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-545.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-546.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-547.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-548.	Shipments; weighing; certificates.
74-549.	Shipments; stations without scales; weighing.
74-550.	Shipments; failure to weigh; penalty.
74-551.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-552.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-553.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-554.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-555.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-556.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-557.	Repealed. Laws 1994, LB 414, § 137.
74-558.	Repealed. Laws 1994, LB 414, § 137.
74-559.	Repealed. Laws 1994, LB 414, § 137.
74-560.	Repealed. Laws 1994, LB 414, § 137.
74-561.	Repealed. Laws 1994, LB 414, § 137.
74-562.	Repealed. Laws 1994, LB 414, § 137.
74-563.	Repealed. Laws 1994, LB 414, § 137.
74-564.	Repealed. Laws 1994, LB 414, § 137.
74-565.	Repealed. Laws 1994, LB 414, § 137.
74-566.	Repealed. Laws 1994, LB 414, § 137.
74-567.	Repealed. Laws 1994, LB 414, § 137.
74-568.	Repealed. Laws 1994, LB 414, § 137.
74-569.	Repealed. Laws 1994, LB 414, § 137.
74-570.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-571.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-572.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-573.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-574.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-575.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-576.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-577.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-578.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-579.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-580.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-581.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.01.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.02.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-583.	Repealed. Laws 1994, LB 414, § 137.
74-584.	Repealed. Laws 1994, LB 414, § 137.
74-585.	Repealed. Laws 1994, LB 414, § 137.
74-586.	Repealed. Laws 1994, LB 414, § 137.
74-587.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-588.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-589.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-590.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-591.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-592.	Track motor cars; headlights; rear light; windshield; equip.
74-593.	Track motor cars; failure to equip; violation; penalty.
74-594.	Train, yard, or engine crew; blocking street or highway; liability; exempt.
74-595.	Litter; duty to remove.
74-596.	Speed limitation ordinance; requirements for enactment.
74-597.	Railroad accident or unlawful operation; prohibited law enforcement procedures.



Section  
74-598. Repealed. Laws 1994, LB 414, § 137.  
74-599. Repealed. Laws 1994, LB 414, § 137.  
74-5,100. Repealed. Laws 1994, LB 414, § 137.  
74-5,100.01. Repealed. Laws 1994, LB 414, § 137.  
74-5,101. Repealed. Laws 1994, LB 414, § 137.  
74-5,102. Repealed. Laws 1994, LB 414, § 137.  
74-5,103. Repealed. Laws 1994, LB 414, § 137.

**74-501 Repealed. Laws 1994, LB 414, § 137.**

**74-502 Repealed. Laws 1994, LB 414, § 137.**

**74-503 Repealed. Laws 1994, LB 414, § 137.**

**74-504 Repealed. Laws 1994, LB 414, § 137.**

**74-505 Repealed. Laws 1994, LB 414, § 137.**

**74-506 Repealed. Laws 1994, LB 414, § 137.**

**74-507 Repealed. Laws 1994, LB 414, § 137.**

**74-508 Repealed. Laws 1994, LB 414, § 137.**

**74-509 Repealed. Laws 1994, LB 414, § 137.**

**74-510 Repealed. Laws 1994, LB 414, § 137.**

**74-511 Repealed. Laws 1994, LB 414, § 137.**

**74-512 Repealed. Laws 1994, LB 414, § 137.**

**74-513 Repealed. Laws 1994, LB 414, § 137.**

**74-514 Repealed. Laws 1994, LB 414, § 137.**

**74-515 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-516 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-517 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-518 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-519 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-520 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-521 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-522 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-523 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-524 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-525 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-526 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-527 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-528 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-529 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-530 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-531 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-532 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-533 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-534 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-535 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-536 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-537 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-538 Repealed. Laws 1994, LB 414, § 137.**

**74-539 Repealed. Laws 1994, LB 414, § 137.**

**74-540 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-541 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-542 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-543 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-544 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-545 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-546 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-547 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-548 Shipments; weighing; certificates.**

The owner, consignor, or consignee of any carload lots of grain, coal, merchandise, or other property in course of transportation over any railroad within the state, transporting the same for hire, may request in writing any agent of the operators of such railroad to weigh any such carloads of grain, coal, merchandise, or other property in course of transportation. Upon such a request being received, it shall become the duty of the operators of such railroad to weigh the car or cars designated in such written request, together with their contents, upon such track scale as may be designated in such written request, over which such car or cars in the regular course of transit will thereafter pass, and deliver to the person making such request a written certificate showing the name and number of the car so weighed, the date of the taking of such weight, and the place where weighed, with the number of pounds of gross and net weights, after deducting the tare marked on the car from such gross weight. The certificate so executed and delivered shall be admissible evidence against such railroad in any legal proceeding, thereafter instituted or then pending against any such railroad weighing and transporting

the property contained in such car or cars, of all the facts stated in such certificate.

**Source:** Laws 1907, c. 88, § 3, p. 307; R.S.1913, § 6007; C.S.1922, § 5352; C.S.1929, § 74-535; R.S.1943, § 74-548; Laws 1994, LB 414, § 5.

**74-549 Shipments; stations without scales; weighing.**

Wherever any carload lot of merchandise, coal, grain, or other property is delivered for transportation for hire to any railroad within this state, consigned to any person at a station on the line of the railroad or upon any other railroad within this state, where no track scale is located and maintained, and such car in the course of transit will not pass a track scale on the line of such connecting railroad, it shall immediately become the duty of such initial railroad to cause the same to be weighed in the manner required by section 74-548 on the track scale located nearest the station to which such car is consigned and to stamp upon the waybill for such car all of the matters required to be set out in the certificate provided for in such section. Where coal, grain, merchandise, or other property in carload lots is consigned to stations where track scales are located and the consignee requests the same to be weighed, the weights shall be taken, both gross and tare, with the car uncoupled, on such track scales at the point of destination.

**Source:** Laws 1907, c. 88, § 4, p. 308; R.S.1913, § 6008; C.S.1922, § 5353; C.S.1929, § 74-536; R.S.1943, § 74-549; Laws 1994, LB 414, § 6.

**74-550 Shipments; failure to weigh; penalty.**

Any railroad operating in this state and violating any of the provisions of sections 74-548 and 74-549 by neglecting or refusing to furnish weights as provided in section 74-549 shall upon conviction thereof be fined in the sum of one hundred dollars for each and every such violation. The fine shall be recovered by the state in an action in its name upon complaint of any owner, consignor, or consignee of the property which such railroad refuses to weigh, made before any court of competent jurisdiction.

**Source:** Laws 1907, c. 88, § 5, p. 308; R.S.1913, § 6009; C.S.1922, § 5354; C.S.1929, § 74-537; R.S.1943, § 74-550; Laws 1994, LB 414, § 7.

**74-551 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-552 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-553 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-554 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-555 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-556 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-557 Repealed. Laws 1994, LB 414, § 137.**

**74-558 Repealed. Laws 1994, LB 414, § 137.**

- 74-559 Repealed. Laws 1994, LB 414, § 137.
- 74-560 Repealed. Laws 1994, LB 414, § 137.
- 74-561 Repealed. Laws 1994, LB 414, § 137.
- 74-562 Repealed. Laws 1994, LB 414, § 137.
- 74-563 Repealed. Laws 1994, LB 414, § 137.
- 74-564 Repealed. Laws 1994, LB 414, § 137.
- 74-565 Repealed. Laws 1994, LB 414, § 137.
- 74-566 Repealed. Laws 1994, LB 414, § 137.
- 74-567 Repealed. Laws 1994, LB 414, § 137.
- 74-568 Repealed. Laws 1994, LB 414, § 137.
- 74-569 Repealed. Laws 1994, LB 414, § 137.
- 74-570 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-571 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-572 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-573 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-574 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-575 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-576 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-577 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-578 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-579 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-580 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-581 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582.01 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582.02 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-583 Repealed. Laws 1994, LB 414, § 137.
- 74-584 Repealed. Laws 1994, LB 414, § 137.
- 74-585 Repealed. Laws 1994, LB 414, § 137.
- 74-586 Repealed. Laws 1994, LB 414, § 137.
- 74-587 Repealed. Laws 1963, c. 425, art. 8, § 2.

**74-588 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-589 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-590 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-591 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-592 Track motor cars; headlights; rear light; windshield; equip.**

Each railroad shall equip each of its track motor cars used during the period from sunset to sunrise with (1) an electric headlight of such construction either permanent or portable and with sufficient candlepower to render plainly visible at a distance of not less than three hundred feet in advance of such track motor car any track obstruction, landmark, warning sign, or grade crossing and (2) a red rear electric light of such construction and with sufficient candlepower as to be plainly visible at a distance of three hundred feet. Such track motor cars shall be equipped with a shield of sufficient width and height to afford reasonable protection to the employees transported by it, part of which shall be a windshield of transparent shatterproof material.

**Source:** Laws 1949, c. 217, § 1, p. 616; Laws 1959, c. 336, § 1, p. 1218; Laws 1993, LB 575, § 52; Laws 1994, LB 414, § 8.

**74-593 Track motor cars; failure to equip; violation; penalty.**

Any railroad which uses or permits to be used on its line in this state a track motor car in violation of section 74-592 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1949, c. 217, § 2, p. 616; Laws 1977, LB 39, § 185; Laws 1994, LB 414, § 9.

**74-594 Train, yard, or engine crew; blocking street or highway; liability; exempt.**

No member of a train crew, yard crew, or engine crew of a railroad shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road, or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that the occupying or blocking of the street, road, or highway crossing-at-grade was necessary to comply with orders or instructions either written or oral of his or her employer or its officers or supervisory officials. This section shall not relieve the employer or railroad from any responsibility placed upon the employer or railroad by any such state laws or by such municipal ordinances. This section shall be supplemental to any other law.

**Source:** Laws 1967, c. 473, § 1, p. 1468; R.S.Supp., 1967, § 75-594; Laws 1994, LB 414, § 10.

**74-595 Litter; duty to remove.**

Each railroad shall be responsible for the removal of all litter as defined in section 28-523 on property owned or leased by the railroad which is under a bridge, trestle, or similar structure.

**Source:** Laws 1979, LB 42, § 11; Laws 1994, LB 414, § 11.

**74-596 Speed limitation ordinance; requirements for enactment.**

No speed limitation ordinance which would directly affect the operations of an interstate railroad shall be valid or enforceable unless its adoption is in compliance with this section. Before the first reading of the proposed ordinance, each railroad the operations of which would be directly affected by the ordinance shall be given written notice by United States mail of the proposed ordinance and the date, time, and place of such reading. Such notice shall be given at least ten days prior to the reading. Each affected railroad shall have an opportunity to be heard at the first reading. After enactment, each railroad the operations of which would be directly affected shall be provided a written or printed copy of the ordinance by United States mail.

**Source:** Laws 1981, LB 437, § 1; Laws 1994, LB 414, § 12.

**74-597 Railroad accident or unlawful operation; prohibited law enforcement procedures.**

In any circumstances involving a railroad accident or the operation of a train in violation of state law or local ordinance, no engineer or other crew member of the train shall be required to furnish a motor vehicle operator's license to any state or local law enforcement officer, nor shall any citation involving the operation of a train be issued against the motor vehicle operator's license of the engineer or any other crew member of the train.

**Source:** Laws 1981, LB 437, § 2.

**74-598 Repealed. Laws 1994, LB 414, § 137.**

**74-599 Repealed. Laws 1994, LB 414, § 137.**

**74-5,100 Repealed. Laws 1994, LB 414, § 137.**

**74-5,100.01 Repealed. Laws 1994, LB 414, § 137.**

**74-5,101 Repealed. Laws 1994, LB 414, § 137.**

**74-5,102 Repealed. Laws 1994, LB 414, § 137.**

**74-5,103 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 6****FENCING AND MOWING RIGHT-OF-WAY**

Section	
74-601.	Fencing; cattle guards.
74-602.	Failure to fence or repair; liability.
74-603.	Fencing; duty; landowner may fence; cost.
74-604.	Failure to fence; injury to livestock; liability.
74-605.	Injured animals; care; violation; penalty.
74-606.	Repealed. Laws 1994, LB 414, § 137.
74-607.	Repealed. Laws 1994, LB 414, § 137.
74-608.	Right-of-way; cover for wildlife; vegetation; exceptions.
74-609.	Right-of-way; vegetation; treatment; charge by county; collection.
74-609.01.	Right-of-way; hunting upon; unlawful; penalty.
74-610.	Repealed. Laws 1994, LB 414, § 137.
74-611.	Repealed. Laws 1994, LB 414, § 137.
74-612.	Repealed. Laws 1994, LB 414, § 137.
74-613.	Repealed. Laws 1963, c. 425, art. 8, § 2.

Section  
74-614. Repealed. Laws 1963, c. 425, art. 8, § 2.

### 74-601 Fencing; cattle guards.

Within six months after the lines of the railroad or any part thereof is open, each railroad shall erect and thereafter maintain fences on the sides of its right-of-way, or the part thereof so open for use, suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting on such right-of-way, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with openings, gates, or bars at all the farm crossings of its tracks for the use of the proprietors of the lands adjoining such right-of-way. Each railroad shall also construct and maintain, at all road crossings, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting onto such right-of-way.

**Source:** Laws 1867, § 1, p. 88; Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-601; Laws 1994, LB 414, § 13.

1. Necessity of fencing
2. Liability for failure to fence
3. Miscellaneous

#### 1. Necessity of fencing

The refusal of the War Department to permit the erection of fences upon a military reservation constituted sufficient justification for the failure of the railway company to fence its tracks running through said reservation. *Anderson v. Chicago & N. W. Ry. Co.*, 102 Neb. 578, 168 N.W. 196 (1918).

The spirit of this statute requires a railroad company to so fence and enclose its tracks, aside from the exceptions therein noted and except at such points as would endanger the lives of its employees, in such a manner as to prevent stock from entering upon the right-of-way. *De Graw v. Chicago, B. & Q. Ry. Co.*, 101 Neb. 724, 164 N.W. 706 (1917).

The fact that this statute does not make fencing obligatory within the limits of cities or villages does not mean that there cannot be actionable negligence for failure to enclose such premises which may be dangerous under particular circumstances. *Krummack v. Missouri P. Ry. Co.*, 98 Neb. 773, 154 N.W. 541 (1915).

Where the establishment of fences or cattle guards would endanger the lives of trainmen, the company is not only excused from enclosing its right-of-way but is also under a duty not to do so. *Burnham v. Chicago, B. & Q. Ry. Co.*, 83 Neb. 183, 119 N.W. 235 (1909).

Whether the business of the public with the railroad or the operation of the railroad with due regard to its employees' safety would excuse a failure to fence the track at the point where the injury occurred is a question for the jury. *Rosenberg v. Chicago, B. & Q. R.R. Co.*, 77 Neb. 663, 110 N.W. 641 (1906).

A railroad company is not required to fence its right-of-way across a public highway, whether such highway is established by legal authority or by adverse user. *Chicago, B. & Q. R.R. Co. v. Dowhower*, 74 Neb. 600, 104 N.W. 1070 (1905).

Failure to fence the right-of-way in a particular locality outside the limits of a city, town, or village, is excusable to an extent sufficient to afford the public and the railroad company necessary facilities for transacting the business reasonably to be expected at such locality. *Chicago, B. & Q. R.R. Co. v. Sevcek*, 72 Neb. 793, 101 N.W. 981 (1904), reversed on the evidence, 72 Neb. 793, 110 N.W. 639 (1906).

A track remote from the depot grounds, not within the limits of any city, town, or village, not near a crossing, and not necessary for use in making up trains is not within the exception

to this statute requiring rights-of-way to be fenced. *Union P. R.R. Co. v. Knowlton*, 43 Neb. 751, 62 N.W. 203 (1895).

Gates at farm crossings are part of the railway fence and, like it, must be sufficient for the purposes indicated in this section. *Fremont, E. & M. V. R.R. Co. v. Pounder*, 36 Neb. 247, 54 N.W. 509 (1893).

A railroad company is not required to fence that part of its station grounds extending outside the city limits and upon which abuts a platted addition to such city, when such grounds are constantly used and are necessary for the proper transaction of its business as a common carrier. *Chicago, B. & Q. R.R. Co. v. Hogan*, 30 Neb. 686, 46 N.W. 1015 (1890), rehearing of 27 Neb. 801, 43 N.W. 1148 (1889).

This section does not impose upon railroad companies the duty of putting in cattle guards at farm crossings, but requires only that openings shall be made in the right-of-way fence with gates or bars to close and secure such openings. *Omaha & R. V. R. Co. v. Severin*, 30 Neb. 318, 46 N.W. 842 (1890).

#### 2. Liability for failure to fence

Constitutionality of act imposing liability for failure to maintain fences on railroad right-of-way sustained. *Linenbrink v. Chicago and N.W. Ry. Co.*, 177 Neb. 838, 131 N.W.2d 417 (1964).

This statute does not impose liability upon a railway company for injuries to stock caused by themselves when straying upon the right-of-way, for, to warrant recovery under its terms, not only must the company have been negligent in maintaining a fence but the damages must have been done by its agents, engines, or trains. *Brei v. Chicago, B. & Q. R.R. Co.*, 130 Neb. 496, 265 N.W. 539 (1936).

Where the railway company failed to maintain fences as required by this section and in consequence thereof animals went upon the tracks and were injured, the simple negligence of the owner in allowing his stock to escape was no defense in an action for damages incurred by such owner. *Burlington & M. R.R. Co. v. Webb*, 18 Neb. 215, 24 N.W. 706 (1885), 53 Am. R. 809 (1885).

#### 3. Miscellaneous

Failure to fence the right-of-way does not in any respect affect the railroad company's right to its easement nor determine the width thereof. *Roberts v. Sioux City & P. R. Co.*, 73 Neb. 8, 102 N.W. 60 (1905), 2 L.R.A.N.S. 272 (1905).

The fence which is erected by the railroad company must conform to the requirements of this section. *Chicago, B. & Q. Ry. Co. v. James*, 26 Neb. 188, 41 N.W. 992 (1889).

Railroad right-of-way across Fort Robinson Military Reservation was subject to exclusive jurisdiction of federal government. *United States v. Unzeuta*, 281 U.S. 138 (1930).

#### **74-602 Failure to fence or repair; liability.**

So long as such fences and cattle guards are not made after the time prescribed in section 74-601 has elapsed and when such fences and guards, or any part thereof, are not in sufficiently good repair to accomplish the objects for which they are intended, such railroad and its agents shall be liable for any damage which is done by the agents, engines, or trains of any such railroad, or by the locomotives or trains of any other railroad permitted to run over or upon such tracks, to any cattle, horses, sheep, or hogs thereon. When such fences and guards have been fully and duly made and are kept in sufficient repair, such railroad shall not be liable for any damages, unless the damage arises from negligent or willful acts of the railroad or its agents.

**Source:** Laws 1867, § 1, p. 88; Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-602; Laws 1994, LB 414, § 14.

This statute does not deprive the railroad company of its property without due process of law or deny to it the equal protection of the law, and under its terms a company may be liable for injuries to animals upon its right-of-way although there be no collision between its trains and the animals injured. *Middaugh v. Chicago & N. W. Ry. Co.*, 114 Neb. 438, 208 N.W. 139 (1926).

If a railway company fails to maintain a fence along its right-of-way as required by this section and in consequence thereof horses go upon the track and are injured, the fact that the horses were, at the time, running away does not exonerate the company. *Larson v. Chicago & N. W. Ry. Co.*, 89 Neb. 247, 131 N.W. 201 (1911).

This statute was not intended to provide a penalty for a failure to maintain cattle guards but to afford compensation to an owner for stock injured in consequence of such failure, so that, to warrant a recovery under its terms, the injury must be

traceable to the railroad company's omission to perform that duty. *Chicago, B. & Q. R.R. Co. v. King*, 76 Neb. 591, 107 N.W. 981 (1906).

To create liability under this section, in addition to the company's failure to maintain a fence, the injury must have been occasioned by an agent, engine, or train of the company, but it is not essential to recovery that there must have been a collision between the animals and the train. *Chicago, B. & Q. R.R. Co. v. Cox*, 51 Neb. 479, 71 N.W. 37 (1897). Overruling *B. & M. R.R. Co. v. Shoemaker*, 18 Neb. 369, 25 N.W. 365 (1885).

In an action for the wrongful death of an infant, evidence of the company's failure to fence its tracks as required by this section is admissible, for the statute is in the nature of a police regulation imposing a positive duty upon the company, and the failure to obey its provisions is negligence. *Chicago, B. & Q. R.R. Co. v. Grablin*, 38 Neb. 90, 56 N.W. 796 (1893).

#### **74-603 Fencing; duty; landowner may fence; cost.**

Any person who owns land adjoining the right-of-way of any railroad and not within the limits of any town, village, or city who intends to enclose the land, or any part thereof, that adjoins such right-of-way with a fence may notify the railroad in writing of such intention and request the railroad to build a lawful fence as described in section 74-601 on the line between its railroad and the land intended to be enclosed. The notice shall specify two points on such line between which points the fence is requested to be erected and shall describe the land intended to be enclosed. The railroad shall, within six months after receiving such notice, cause the fence requested by such notice to be erected, and in case of a failure so to do, the party giving notice may cause such fence to be erected at a reasonable cost and collect such amount from the railroad.

**Source:** Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-603; Laws 1994, LB 414, § 15.

To entitle one to recover the reasonable expense of erecting a fence along a railroad right-of-way, after the company failed to do so, he must show that the fence erected complies with the

requirements of this section. *Chicago, B. & Q. R.R. Co. v. Lyon*, 50 Neb. 640, 70 N.W. 261 (1897).

#### **74-604 Failure to fence; injury to livestock; liability.**

Any railroad which fails to fence on both sides of its right-of-way against all livestock running at large at all points shall be absolutely liable to the owner of



any livestock injured or killed by the railroad's agents or the agents of any other railroad which runs over and upon such right-of-way.

**Source:** Laws 1867, § 2, p. 89; R.S.1913, § 6036; C.S.1922, § 5397; C.S.1929, § 74-602; R.S.1943, § 74-604; Laws 1994, LB 414, § 16.

In an action to recover the value of animals killed on the railroad company's track by reason of the company's failure to maintain the required fence, the question of the owner's negligence in permitting the stock to run at large is not to be considered. *Chicago, B. & Q. R.R. Co. v. Sims*, 17 Neb. 691, 24 N.W. 388 (1885).

Under this statute, a railroad company failing to fence its track at a point where it is required to fence is liable for stock killed or injured on its track by its engines or cars and the mere negligence of the owner of the stock is no defense. *Burlington & M. R. R. v. Franzen*, 15 Neb. 365, 18 N.W. 511 (1884).

Where the railroad company failed to fence its track, the question of negligence of the owner of stock killed or injured on the right-of-way is not to be considered in an action for damages brought under this and the preceding section. *Burlington & M. R. R. Co. v. Brinkman*, 14 Neb. 70, 15 N.W. 197 (1883).

Where it was stipulated that the stock owner's animals were at large without his fault and that they were killed without any negligence on the part of the railroad company, other than may be inferred from the neglect to fence the right-of-way, the owner was entitled to recover the value of the animals. *Union P. Ry. Co. v. High*, 14 Neb. 14, 14 N.W. 547 (1883).

#### **74-605 Injured animals; care; violation; penalty.**

Whenever any horse, cow, or other domestic animal is injured on the right-of-way of any railroad, the trackwalkers and section personnel of the railroad shall care for the animal at once and report the facts to the nearest station agent. If the animal is injured by a train, such member of the train crew as is required by the railroad shall, upon arriving at the first communications facility, notify the person in charge of the track of the fact, and such person shall at once notify the railroad employee having charge of the section upon which the animal is injured who shall at once care for the animal. If any such animal is maimed beyond hope of recovery, such persons shall kill the animal at once. When the animal is not killed, the section official shall give immediate notice, when possible, of the condition of the animal to the owner or his or her agent who shall have the animal cared for at once. When immediate notice to the owner is not possible, the section official shall have the injured animal properly cared for at once. No act of the railroad, its employees or agents, or the owner of an injured animal pursuant to this section shall be held to be an admission of liability or responsibility on the part of the railroad for the injury of the animal nor a waiver or relinquishment by the owner of any right or claim to damages from the railroad. Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

**Source:** Laws 1911, c. 86, § 1, p. 344; R.S.1913, § 6037; C.S.1922, § 5398; C.S.1929, § 74-603; R.S.1943, § 74-605; Laws 1951, c. 245, § 1, p. 856; Laws 1994, LB 414, § 17.

**74-606 Repealed. Laws 1994, LB 414, § 137.**

**74-607 Repealed. Laws 1994, LB 414, § 137.**

#### **74-608 Right-of-way; cover for wildlife; vegetation; exceptions.**

In order to provide cover for wildlife, the vegetation other than noxious weeds within the fenced right-of-way of all railroads outside the corporate limits of any city or village in Nebraska shall not be destroyed, except that (1) such vegetation shall be destroyed from the space between points a distance of seven feet from the outside of each outermost rail each year between May 1 and August 15 or at such places as may be deemed necessary by the railroad for proper operation or maintenance and (2) the county board or board of supervisors of any county may, by written notice, direct any railroad to spray, mow, or

otherwise treat specified portions of such fenced right-of-way to kill or destroy vegetation.

**Source:** Laws 1897, c. 17, § 1, p. 183; R.S.1913, § 6040; C.S.1922, § 5401; C.S.1929, § 74-606; R.S.1943, § 74-608; Laws 1959, c. 337, § 1, p. 1219; Laws 1969, c. 599, § 1, p. 2454; Laws 1994, LB 414, § 18.

**74-609 Right-of-way; vegetation; treatment; charge by county; collection.**

If any railroad neglects or refuses to cause its right-of-way to be mowed, sprayed, or otherwise treated as provided in section 74-608, the county board or board of supervisors in which county the right-of-way is located shall, after the time in which the railroad is required to act, cause the vegetation on the railroad right-of-way to be mowed, sprayed, or otherwise treated and the county may charge the railroad the reasonable cost thereof. The county clerk shall include such amounts in making the county tax list as an assessment against such railroad, and the assessment shall be collected in the same manner and at the same time as other taxes.

**Source:** Laws 1897, c. 17, § 2, p. 183; Laws 1909, c. 99, § 1, p. 407; R.S.1913, § 6041; Laws 1915, c. 105, § 1, p. 251; C.S.1922, § 5402; Laws 1925, c. 162, § 1, p. 424; C.S.1929, § 74-607; R.S.1943, § 74-609; Laws 1959, c. 337, § 2, p. 1220; Laws 1994, LB 414, § 19.

**74-609.01 Right-of-way; hunting upon; unlawful; penalty.**

It shall be unlawful for anyone to hunt upon the fenced right-of-way of any railroad in Nebraska without permission of the owner or responsible authority. Any person who violates this section shall be guilty of a Class III misdemeanor.

**Source:** Laws 1959, c. 337, § 3, p. 1220; Laws 1977, LB 39, § 187; Laws 1994, LB 414, § 20.

**74-610 Repealed. Laws 1994, LB 414, § 137.**

**74-611 Repealed. Laws 1994, LB 414, § 137.**

**74-612 Repealed. Laws 1994, LB 414, § 137.**

**74-613 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**74-614 Repealed. Laws 1963, c. 425, art. 8, § 2.**

**ARTICLE 7**

**LIABILITY TO EMPLOYEES, SHIPPERS, AND PASSENGERS**

Section

- 74-701. Repealed. Laws 1951, c. 246, § 1.
- 74-702. Repealed. Laws 1994, LB 414, § 137.
- 74-703. Repealed. Laws 1994, LB 414, § 137.
- 74-704. Repealed. Laws 1994, LB 414, § 137.
- 74-705. Repealed. Laws 1994, LB 414, § 137.
- 74-706. Transferred to section 74-921.
- 74-707. Repealed. Laws 1994, LB 414, § 137.
- 74-708. Repealed. Laws 1994, LB 414, § 137.
- 74-709. Repealed. Laws 1994, LB 414, § 137.

Section

- 74-710. Repealed. Laws 1994, LB 414, § 137.
- 74-711. Repealed. Laws 1994, LB 414, § 137.
- 74-712. Repealed. Laws 1994, LB 414, § 137.
- 74-713. Repealed. Laws 1994, LB 414, § 137.
- 74-714. Repealed. Laws 1994, LB 414, § 137.
- 74-715. Repealed. Laws 1994, LB 414, § 137.

**74-701 Repealed. Laws 1951, c. 246, § 1.**

**74-702 Repealed. Laws 1994, LB 414, § 137.**

**74-703 Repealed. Laws 1994, LB 414, § 137.**

**74-704 Repealed. Laws 1994, LB 414, § 137.**

**74-705 Repealed. Laws 1994, LB 414, § 137.**

**74-706 Transferred to section 74-921.**

**74-707 Repealed. Laws 1994, LB 414, § 137.**

**74-708 Repealed. Laws 1994, LB 414, § 137.**

**74-709 Repealed. Laws 1994, LB 414, § 137.**

**74-710 Repealed. Laws 1994, LB 414, § 137.**

**74-711 Repealed. Laws 1994, LB 414, § 137.**

**74-712 Repealed. Laws 1994, LB 414, § 137.**

**74-713 Repealed. Laws 1994, LB 414, § 137.**

**74-714 Repealed. Laws 1994, LB 414, § 137.**

**74-715 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 8**

**RATES AND FARES**

**Cross References**

**Constitutional provisions:**

Regulatory authority of Public Service Commission, see Article IV, section 20, Constitution of Nebraska.  
Schedules of rates, charges, and tariffs, see sections 75-118 to 75-127.

Section

- 74-801. Repealed. Laws 1994, LB 414, § 137.
- 74-802. Repealed. Laws 1957, c. 308, § 3.
- 74-803. Repealed. Laws 1957, c. 308, § 3.
- 74-804. Repealed. Laws 1994, LB 414, § 137.
- 74-805. Repealed. Laws 1994, LB 414, § 137.
- 74-806. Repealed. Laws 1994, LB 414, § 137.
- 74-807. Repealed. Laws 1994, LB 414, § 137.
- 74-808. Repealed. Laws 1957, c. 308, § 3.
- 74-809. Repealed. Laws 1957, c. 308, § 3.
- 74-810. Repealed. Laws 1957, c. 308, § 3.
- 74-811. Repealed. Laws 1957, c. 308, § 3.
- 74-812. Repealed. Laws 1945, c. 181, § 1.
- 74-813. Repealed. Laws 1945, c. 181, § 1.
- 74-814. Repealed. Laws 1945, c. 181, § 1.

## Section

- 74-815. Repealed. Laws 1994, LB 414, § 137.
- 74-816. Repealed. Laws 1994, LB 414, § 137.
- 74-817. Repealed. Laws 1994, LB 414, § 137.
- 74-818. Repealed. Laws 1994, LB 414, § 137.
- 74-819. Repealed. Laws 1994, LB 414, § 137.
- 74-820. Repealed. Laws 1994, LB 414, § 137.
- 74-821. Repealed. Laws 1994, LB 414, § 137.
- 74-822. Repealed. Laws 1994, LB 414, § 137.
- 74-823. Repealed. Laws 1994, LB 414, § 137.

**74-801 Repealed. Laws 1994, LB 414, § 137.**

**74-802 Repealed. Laws 1957, c. 308, § 3.**

**74-803 Repealed. Laws 1957, c. 308, § 3.**

**74-804 Repealed. Laws 1994, LB 414, § 137.**

**74-805 Repealed. Laws 1994, LB 414, § 137.**

**74-806 Repealed. Laws 1994, LB 414, § 137.**

**74-807 Repealed. Laws 1994, LB 414, § 137.**

**74-808 Repealed. Laws 1957, c. 308, § 3.**

**74-809 Repealed. Laws 1957, c. 308, § 3.**

**74-810 Repealed. Laws 1957, c. 308, § 3.**

**74-811 Repealed. Laws 1957, c. 308, § 3.**

**74-812 Repealed. Laws 1945, c. 181, § 1.**

**74-813 Repealed. Laws 1945, c. 181, § 1.**

**74-814 Repealed. Laws 1945, c. 181, § 1.**

**74-815 Repealed. Laws 1994, LB 414, § 137.**

**74-816 Repealed. Laws 1994, LB 414, § 137.**

**74-817 Repealed. Laws 1994, LB 414, § 137.**

**74-818 Repealed. Laws 1994, LB 414, § 137.**

**74-819 Repealed. Laws 1994, LB 414, § 137.**

**74-820 Repealed. Laws 1994, LB 414, § 137.**

**74-821 Repealed. Laws 1994, LB 414, § 137.**

**74-822 Repealed. Laws 1994, LB 414, § 137.**

**74-823 Repealed. Laws 1994, LB 414, § 137.**

## ARTICLE 9

### SAFETY OF EMPLOYEES AND PASSENGERS

#### Section

- 74-901. Repealed. Laws 1994, LB 414, § 137.
- 74-902. Repealed. Laws 1994, LB 414, § 137.
- 74-903. Repealed. Laws 1994, LB 414, § 137.
- 74-904. Repealed. Laws 1994, LB 414, § 137.
- 74-905. Repealed. Laws 1994, LB 414, § 137.
- 74-906. Repealed. Laws 1994, LB 414, § 137.
- 74-907. Repealed. Laws 1994, LB 414, § 137.
- 74-908. Repealed. Laws 1994, LB 414, § 137.
- 74-909. Repealed. Laws 1994, LB 414, § 137.
- 74-910. Repealed. Laws 1994, LB 414, § 137.
- 74-911. Repealed. Laws 1994, LB 414, § 137.
- 74-912. Repealed. Laws 1994, LB 414, § 137.
- 74-913. Repealed. Laws 1980, LB 203, § 2.
- 74-914. Repealed. Laws 1986, LB 744, § 1.
- 74-915. Health and safety of employees; rules and regulations.
- 74-916. Drinking water and cups; duty to provide.
- 74-917. Rules and regulations; dispute; notice; hearing.
- 74-918. Drinking water; toilet facilities; locomotives and waycars; duty to provide; violation; penalty.
- 74-919. Margins along tracks; keep free from debris and vegetation; enforcement.
- 74-920. Repealed. Laws 1994, LB 414, § 137.
- 74-921. Locomotive operators; conductors; intoxication; penalty.
- 74-922. Repealed. Laws 2004, LB 940, § 4.
- 74-923. Repealed. Laws 2004, LB 940, § 4.
- 74-924. Repealed. Laws 2004, LB 940, § 4.
- 74-925. Repealed. Laws 2004, LB 940, § 4.

**74-901 Repealed. Laws 1994, LB 414, § 137.**

**74-902 Repealed. Laws 1994, LB 414, § 137.**

**74-903 Repealed. Laws 1994, LB 414, § 137.**

**74-904 Repealed. Laws 1994, LB 414, § 137.**

**74-905 Repealed. Laws 1994, LB 414, § 137.**

**74-906 Repealed. Laws 1994, LB 414, § 137.**

**74-907 Repealed. Laws 1994, LB 414, § 137.**

**74-908 Repealed. Laws 1994, LB 414, § 137.**

**74-909 Repealed. Laws 1994, LB 414, § 137.**

**74-910 Repealed. Laws 1994, LB 414, § 137.**

**74-911 Repealed. Laws 1994, LB 414, § 137.**

**74-912 Repealed. Laws 1994, LB 414, § 137.**

**74-913 Repealed. Laws 1980, LB 203, § 2.**

**74-914 Repealed. Laws 1986, LB 744, § 1.****74-915 Health and safety of employees; rules and regulations.**

The Department of Labor is hereby authorized to promulgate and enforce reasonable rules and regulations after due notice and hearing for the safety, sanitation, shelter, and health of railroad maintenance-of-way employees, as far as shelter and drinking water for human consumption pertain to the railroad maintenance-of-way employees.

**Source:** Laws 1955, c. 189, § 1, p. 537; Laws 1969, c. 600, § 1, p. 2455.

**74-916 Drinking water and cups; duty to provide.**

An adequate supply of cool, sanitary water, for drinking purposes, shall be made available for use of all employees of railroads. Sanitary containers, equipped with a faucet or other dispenser, and individual paper drinking cups shall be furnished by the railroad.

**Source:** Laws 1955, c. 189, § 2, p. 537; Laws 1969, c. 600, § 2, p. 2455; Laws 1994, LB 414, § 22.

**74-917 Rules and regulations; dispute; notice; hearing.**

In the event of any dispute or disagreement between any employee and any employer as to the intent, meaning, and interpretation of any or all of the rules adopted in accordance with section 74-915, the Department of Labor shall give notice, to the parties interested, of a date for hearing thereon. After hearing the testimony of all parties, it shall enter an order in accordance therewith.

**Source:** Laws 1955, c. 189, § 3, p. 537.

**74-918 Drinking water; toilet facilities; locomotives and waycars; duty to provide; violation; penalty.**

Each railroad which operates in this state shall provide sanitary drinking water and toilet facilities on all road locomotives and waycars owned by such railroad when ordered, after investigation, notice, and hearing, by the Public Service Commission. The commission shall specify the type of facilities that shall be installed on each road locomotive and waycar placed in service after January 1, 1971. This section shall not prevent any railroad from operating equipment not in conformity with this section for less than fifty miles. Any railroad which violates this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

**Source:** Laws 1969, c. 598, § 1, p. 2453; Laws 1994, LB 414, § 23.

**74-919 Margins along tracks; keep free from debris and vegetation; enforcement.**

Each railroad in this state shall keep and maintain the margins alongside its tracks where railroad employees are required to walk in the course of their duties reasonably free from debris and vegetation which affect the safety of such employees while working. The Public Service Commission shall enforce and prosecute any violation of this section.

**Source:** Laws 1973, LB 177, § 1; Laws 1994, LB 414, § 24.

**74-920 Repealed. Laws 1994, LB 414, § 137.**

**74-921 Locomotive operators; conductors; intoxication; penalty.**

Any person who is intoxicated while in charge of a locomotive running upon the track of any railroad or while acting as the conductor of a car or train of cars on any railroad shall be guilty of a Class I misdemeanor.

**Source:** R.S.1866, c. 25, § 108, p. 227; R.S.1913, § 6057; C.S.1922, § 5414; C.S.1929, § 74-706; R.S.1943, § 74-706; Laws 1977, LB 39, § 188; R.S.1943, (1990), § 74-706; Laws 1994, LB 414, § 21.

**74-922 Repealed. Laws 2004, LB 940, § 4.**

**74-923 Repealed. Laws 2004, LB 940, § 4.**

**74-924 Repealed. Laws 2004, LB 940, § 4.**

**74-925 Repealed. Laws 2004, LB 940, § 4.**

## ARTICLE 10

### FREIGHT

#### Section

- 74-1001. Repealed. Laws 1994, LB 414, § 137.
- 74-1002. Repealed. Laws 1957, c. 308, § 3.
- 74-1003. Repealed. Laws 1957, c. 308, § 3.
- 74-1004. Repealed. Laws 1994, LB 414, § 137.
- 74-1005. Repealed. Laws 1994, LB 414, § 137.
- 74-1006. Repealed. Laws 1994, LB 414, § 137.
- 74-1007. Repealed. Laws 1957, c. 308, § 3.
- 74-1008. Repealed. Laws 1994, LB 414, § 137.
- 74-1009. Repealed. Laws 1957, c. 308, § 3.
- 74-1010. Repealed. Laws 1994, LB 414, § 137.
- 74-1011. Repealed. Laws 1994, LB 414, § 137.
- 74-1012. Repealed. Laws 1994, LB 414, § 137.

**74-1001 Repealed. Laws 1994, LB 414, § 137.**

**74-1002 Repealed. Laws 1957, c. 308, § 3.**

**74-1003 Repealed. Laws 1957, c. 308, § 3.**

**74-1004 Repealed. Laws 1994, LB 414, § 137.**

**74-1005 Repealed. Laws 1994, LB 414, § 137.**

**74-1006 Repealed. Laws 1994, LB 414, § 137.**

**74-1007 Repealed. Laws 1957, c. 308, § 3.**

**74-1008 Repealed. Laws 1994, LB 414, § 137.**

**74-1009 Repealed. Laws 1957, c. 308, § 3.**

**74-1010 Repealed. Laws 1994, LB 414, § 137.**

**74-1011 Repealed. Laws 1994, LB 414, § 137.**

**74-1012 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 11  
STREET RAILWAYS**

Section

74-1101. Repealed. Laws 1980, LB 741, § 1.  
 74-1102. Repealed. Laws 1980, LB 741, § 1.  
 74-1103. Repealed. Laws 1980, LB 741, § 1.  
 74-1104. Repealed. Laws 1980, LB 741, § 1.  
 74-1105. Repealed. Laws 1980, LB 741, § 1.  
 74-1106. Repealed. Laws 1980, LB 741, § 1.  
 74-1107. Repealed. Laws 1980, LB 741, § 1.  
 74-1108. Repealed. Laws 1980, LB 741, § 1.  
 74-1109. Repealed. Laws 1980, LB 741, § 1.  
 74-1110. Repealed. Laws 1980, LB 741, § 1.  
 74-1111. Repealed. Laws 1980, LB 741, § 1.  
 74-1112. Repealed. Laws 1980, LB 741, § 1.  
 74-1113. Repealed. Laws 1980, LB 741, § 1.  
 74-1114. Repealed. Laws 1980, LB 741, § 1.  
 74-1115. Repealed. Laws 1980, LB 741, § 1.  
 74-1116. Repealed. Laws 1980, LB 741, § 1.  
 74-1117. Repealed. Laws 1980, LB 741, § 1.  
 74-1118. Repealed. Laws 1980, LB 741, § 1.  
 74-1119. Repealed. Laws 1980, LB 741, § 1.  
 74-1120. Repealed. Laws 1980, LB 741, § 1.  
 74-1121. Repealed. Laws 1980, LB 741, § 1.  
 74-1122. Repealed. Laws 1980, LB 741, § 1.  
 74-1123. Repealed. Laws 1980, LB 741, § 1.  
 74-1124. Repealed. Laws 1980, LB 741, § 1.  
 74-1125. Repealed. Laws 1980, LB 741, § 1.

**74-1101 Repealed. Laws 1980, LB 741, § 1.**

**74-1102 Repealed. Laws 1980, LB 741, § 1.**

**74-1103 Repealed. Laws 1980, LB 741, § 1.**

**74-1104 Repealed. Laws 1980, LB 741, § 1.**

**74-1105 Repealed. Laws 1980, LB 741, § 1.**

**74-1106 Repealed. Laws 1980, LB 741, § 1.**

**74-1107 Repealed. Laws 1980, LB 741, § 1.**

**74-1108 Repealed. Laws 1980, LB 741, § 1.**

**74-1109 Repealed. Laws 1980, LB 741, § 1.**

**74-1110 Repealed. Laws 1980, LB 741, § 1.**

**74-1111 Repealed. Laws 1980, LB 741, § 1.**

**74-1112 Repealed. Laws 1980, LB 741, § 1.**

**74-1113 Repealed. Laws 1980, LB 741, § 1.**

**74-1114 Repealed. Laws 1980, LB 741, § 1.**

**74-1115 Repealed. Laws 1980, LB 741, § 1.**



- 74-1116 Repealed. Laws 1980, LB 741, § 1.
- 74-1117 Repealed. Laws 1980, LB 741, § 1.
- 74-1118 Repealed. Laws 1980, LB 741, § 1.
- 74-1119 Repealed. Laws 1980, LB 741, § 1.
- 74-1120 Repealed. Laws 1980, LB 741, § 1.
- 74-1121 Repealed. Laws 1980, LB 741, § 1.
- 74-1122 Repealed. Laws 1980, LB 741, § 1.
- 74-1123 Repealed. Laws 1980, LB 741, § 1.
- 74-1124 Repealed. Laws 1980, LB 741, § 1.
- 74-1125 Repealed. Laws 1980, LB 741, § 1.

**ARTICLE 12**

**CLAIMS AGAINST COMMON CARRIERS**

Section

- 74-1201. Repealed. Laws 1994, LB 414, § 137.
- 74-1202. Repealed. Laws 1994, LB 414, § 137.
- 74-1203. Repealed. Laws 1994, LB 414, § 137.
- 74-1204. Repealed. Laws 1994, LB 414, § 137.

- 74-1201 Repealed. Laws 1994, LB 414, § 137.
- 74-1202 Repealed. Laws 1994, LB 414, § 137.
- 74-1203 Repealed. Laws 1994, LB 414, § 137.
- 74-1204 Repealed. Laws 1994, LB 414, § 137.

**ARTICLE 13**

**RAILROAD SAFETY**

(a) RAILROAD TRANSPORTATION SAFETY DISTRICT

Section

- 74-1301. Policy of state.
- 74-1302. Railroad transportation safety district; formation; purpose.
- 74-1303. District; formation; procedure.
- 74-1304. Board of directors; members; appointment; expenses.
- 74-1305. District; powers.
- 74-1306. Budget; submit to county board; levy; tax.
- 74-1307. Bonds; issuance; sinking fund.
- 74-1308. Officers; meetings; bond; records; inspection; treasurer; report; violations; penalty.
- 74-1309. Repealed. Laws 1995, LB 80, § 4.

(b) RAILROAD CROSSINGS

- 74-1310. Department, defined.
- 74-1311. Department; determine railroad crossing safety measures needed.
- 74-1312. Department; establish priority list for railroad crossing safety improvement.
- 74-1313. Priority list; factors to be considered.

§ 74-1301

RAILROADS

Section

- 74-1314. Political subdivision; determine need for railroad crossing safety measure; notice to railroad; priority.
- 74-1315. Department; utilize federal funds; matching funds; how paid.
- 74-1316. Railroad crossing accident; notice to department; when.
- 74-1317. Grade Crossing Protection Fund; created; purpose; investment.
- 74-1318. Grade Crossing Protection Fund; department; administer; procedure; division of cost; responsibility for protection devices; powers and duties.
- 74-1319. Abandoned railroad line; removal of grade crossing protection devices.
- 74-1320. Excise tax on railroads transporting freight; rate; collection; report; payment.
- 74-1321. Excise tax on railroad transporting freight; similar appropriation; how used.
- 74-1322. Failure to file report or pay taxes; violation; penalty.
- 74-1323. Railroad car; obstructing view at crossing; violation; penalty.

(c) NEBRASKA HIGHWAY-RAIL CROSSING SAFETY COMMITTEE

- 74-1324. Repealed. Laws 1998, LB 899, § 1.
- 74-1325. Repealed. Laws 1998, LB 899, § 1.
- 74-1326. Repealed. Laws 1998, LB 899, § 1.
- 74-1327. Repealed. Laws 1998, LB 899, § 1.
- 74-1328. Repealed. Laws 1998, LB 899, § 1.

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

- 74-1329. Act, how cited.
- 74-1330. Legislative intent.
- 74-1331. Bridges; construction; dimensions; maintenance; violation; penalty.
- 74-1332. Crossings; jurisdiction of department.
- 74-1333. Crossings; public; maintenance.
- 74-1334. Crossings; public; safety regulations; gates and alarms; closure; when.
- 74-1335. Crossings; private; railroad; duties.
- 74-1336. Crossings; complaints; hearing; order; rules and regulations.
- 74-1337. Crossings; public; county board; agreement.
- 74-1338. Crossings; public; failure of county board and railroad to agree; power of department.
- 74-1339. Crossings; agreement of department; county board or other public authority; powers.
- 74-1340. Crossings; department orders; violation; penalty.
- 74-1341. Grade crossing safety; responsibility.
- 74-1342. Comprehensive public safety program; department; duties.
- 74-1343. Assessment process; recommendations; department; duties.

(a) RAILROAD TRANSPORTATION SAFETY DISTRICT

**74-1301 Policy of state.**

It is declared to be the policy of this state to reduce the number of fatalities and injuries caused by collisions between motor vehicles and railroad trains; to eliminate as far as possible unnecessary conflicts between railroad transportation and highway transportation; to improve the movement of both rail and highway traffic by eliminating grade crossings; and to assist in relocation of railroad facilities that bisect the central portions of municipalities, thus hampering the growth of both the municipality and the railroad services; the effect of such policies being to benefit and enhance the community as a whole. These policies shall not be implemented in any manner without just compensation to all damaged parties, including both railroads and shippers, and, where appropriate, alternate routes for affected railroads.

**Source:** Laws 1971, LB 919, § 1.

**74-1302 Railroad transportation safety district; formation; purpose.**

Whenever, in a county in which is located a city or cities of the primary or first class, it will be conducive to the public health, safety, convenience, or welfare (1) to move, relocate, or remove any railroad tracks or railroad right-of-way, including improvements, (2) to relocate or remove any railroad yard, switch yard, or switch tracks, (3) to change, construct, eliminate, or reconstruct, including the use of protective devices of any kind or nature, any highway or street crossing of a railroad property, (4) to move, construct, or reconstruct any railroad bridge, viaduct, or subway, (5) to acquire, negotiate, sell, or eliminate any joint trackage operating rights or any rights of other individuals or entities over, in, or on any railroad tracks, rights-of-way, switch yards, or switch tracks, or (6) to do any two or more of the activities listed in subdivisions (1) through (5) of this section, a special district to be known as a railroad transportation safety district may be formed and may proceed, as provided in sections 74-1301 to 74-1308, for the purpose of inaugurating, developing, and negotiating for programs which may involve the constructing, reconstructing, leasing, maintaining, or selling of such work or works of public transportation improvement.

**Source:** Laws 1971, LB 919, § 2; Laws 1975, LB 188, § 1; Laws 1981, LB 65, § 1; Laws 1995, LB 80, § 1.

**74-1303 District; formation; procedure.**

Such a district shall be formed by the adoption of a resolution of formation, after a finding that such district is conducive to the public health, safety, convenience, or welfare, by the city council of the city or cities and by the county commissioners of any county in which such city or cities are located. Such district shall then come into existence in accordance with the date set in the resolutions of formation.

**Source:** Laws 1971, LB 919, § 3; Laws 1981, LB 65, § 2.

**74-1304 Board of directors; members; appointment; expenses.**

(1) If a district is formed which includes only one city, such district shall be governed by a board of directors made up of three members from the city council of such city adopting such resolution, which members shall be designated by such council, and of three members from the county commissioners of such county adopting such resolution, which members shall be designated by the county board.

(2) If a district is formed which has two or more cities of the primary or first class, such district shall be governed by a board of directors made up of three members from each city council adopting such resolution, which members shall be designated by such council, and of three members from the county commissioners of such county adopting such resolution which members shall be designated by the county board. When participating in the district's affairs, the members representing the cities shall each have one vote and the members representing the county shall each have one vote for each city represented, so that the total number of votes of members of the cities is equal to the total number of votes of members of the county.

(3) In each instance such designated individual shall be an elected member of such body. No additional compensation shall be paid to such directors, but such directors shall be paid their actual expenses while engaged in the business

of the district. Such directors shall be appointed annually by the respective bodies, or when a vacancy shall earlier occur.

**Source:** Laws 1971, LB 919, § 4; Laws 1981, LB 65, § 3.

**74-1305 District; powers.**

(1) Such district shall have the power, right, and authority after notice and public hearing (a) to purchase within or without such county railroad rights-of-way including the improvements, (b) to purchase land not presently owned or used by any railroad company for additional right-of-way or additional switch or yard space where changes of routes or construction of interconnections or of new railroad yards is necessary or desirable, and (c) to acquire through the exercise of the power of eminent domain, but only upon the vote of the directors of such district, which vote shall require a five-sixths majority in districts governed pursuant to subsection (1) of section 74-1304 and a two-thirds majority in districts governed pursuant to subsection (2) of section 74-1304, and the written approval by each railroad involved in the contemplated relocation project, such land as set forth in subdivision (1)(b) of this section for the purposes set forth in such subdivision, which acquisition shall follow the procedures set forth in sections 76-704 to 76-724.

Such land and improvements as may be acquired for the purpose of the removal of railroad trackage may be disposed of by conveying the same for reasonable consideration to a governmental entity for public purposes or by sale of the same as set forth in this section. Such new railroad rights-of-way, switches, and yards as may be obtained and constructed may be leased for use to railroads or may be sold to such railroads or may be traded to such railroads for other property belonging to such railroads.

Such property, real or personal, shall be sold in such manner and under such terms and conditions as the board shall deem in the best interests of the district, except that if the fair market value exceeds five thousand dollars, it may only be sold after due notice and hearing by such board at a regular meeting upon the vote of a majority of such board.

(2) The board of directors of such district shall also have the right and authority to enter into contracts or other arrangements with the United States Government or its departments, any persons, railroads, corporations, political subdivisions, public and municipal corporations, and the state government of this state, making full use of the Interlocal Cooperation Act and the Joint Public Agency Act, for (a) cooperation or assistance in the design, construction, maintenance, sale, or lease of the works of the district, (b) making surveys and investigations or reports in relation to the objectives of the district, (c) cooperation or assistance in obtaining the construction, maintenance, or operation of a work or works of public improvement within the district for any of the purposes described in section 74-1302, (d) receiving the title or possession, or both, of any property and funds connected directly or indirectly with the purposes described in section 74-1302, (e) assuming, and becoming bound by, any obligations, promises, or covenants so connected, or (f) holding and saving the United States or others free from damages resulting from any construction works that may be undertaken.

(3) Prior to implementing any plans affecting matters of planning by or the interests of any planning commission located within such district, the interests of any municipality, county or state educational institution or school district a

portion of which lies within such district, any municipal county, any agricultural society, any airport authority, any natural resources district, or any other similar political entity, and any railroads, shippers, and affected property owners, the board shall consult with and submit such plans to such entities as may be concerned for study, review, comment, and suggestion. Approval of any state or federal regulatory agency shall be secured, when necessary, prior to implementing any of the provisions contained in sections 74-1301 to 74-1308 and the district shall comply with the requirements of any such agency.

(4) In developing plans for specific projects, to determine the feasibility of implementing the purposes of sections 74-1301 to 74-1308, the district shall examine the costs and benefits to the community or communities, the railroads, and the highway users and shall calculate the costs and benefits by consideration being given but not limited to loss of revenue, increased operating costs, costs of installation, acquisition of real and personal property, relocation, signalization, communication, utilities, avoidance of hazards, creation of transportation efficiencies, resolving conflicts of land use, and any other ancillary or peripheral costs or benefits.

**Source:** Laws 1971, LB 919, § 5; Laws 1974, LB 717, § 1; Laws 1977, LB 510, § 8; Laws 1981, LB 65, § 4; Laws 1995, LB 80, § 2; Laws 1999, LB 87, § 85; Laws 2001, LB 142, § 54.

#### Cross References

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

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

#### **74-1306 Budget; submit to county board; levy; tax.**

Before July 1 of each calendar year, the board of directors shall prepare an itemized budget of funds needed for the next fiscal year which are necessary to carry out the authorities granted under sections 74-1302, 74-1303, and 74-1305. The board of directors shall transmit such budget to the county board. The county board shall levy a tax sufficient to produce the amount of funds requested but not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of all taxable property in the county subject to section 77-3443. Such levy shall be in addition to all other levies authorized or limited by law. The tax so levied shall be collected in the same manner as other property taxes, and the proceeds therefrom shall be kept in a separate account identified by the official name of the transportation district. The county treasurer shall transfer such funds to the district as requested by the board of directors.

**Source:** Laws 1971, LB 919, § 6; Laws 1979, LB 187, § 190; Laws 1992, LB 719A, § 161; Laws 1996, LB 1114, § 66.

#### **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.

**74-1309 Repealed. Laws 1995, LB 80, § 4.**

(b) RAILROAD CROSSINGS

**74-1310 Department, defined.**

For purposes of sections 74-1310 to 74-1322, unless the context otherwise requires, department shall mean the Department of Transportation.

**Source:** Laws 1979, LB 42, § 1; Laws 1994, LB 414, § 25; Laws 2017, LB339, § 251.

**74-1311 Department; determine railroad crossing safety measures needed.**

The department shall have authority to determine that (1) a railroad crossing shall be eliminated, (2) automatic railroad grade crossing protection devices shall be installed, modified, or improved, (3) an overpass or underpass is needed at a railroad crossing, or (4) other measures are necessary to improve public safety at railroad crossings.

**Source:** Laws 1979, LB 42, § 2.

**74-1312 Department; establish priority list for railroad crossing safety improvement.**

The department shall establish and update, as needed, a priority list for improving the safety of railroad crossings in Nebraska. The list shall identify all crossings in need of safety improvements and the relative order of need.

**Source:** Laws 1979, LB 42, § 3.

**74-1313 Priority list; factors to be considered.**

In establishing the priority list under section 74-1312, the department shall consult with governmental subdivisions to determine where railroad crossing safety measures are needed. The department shall consider the accident history of the crossing, the amount of traffic at the crossing, traffic speed limits, population density, visibility of the crossing, any information provided by notices filed with the commission under section 74-1316, the results of any investigations conducted by the Public Service Commission under section 75-426, and similar factors.

**Source:** Laws 1979, LB 42, § 4.

**74-1314 Political subdivision; determine need for railroad crossing safety measure; notice to railroad; priority.**

When any political subdivision of this state determines that public safety will be improved by eliminating a crossing, by the installation, substantial modification, or improvement of automatic railroad grade crossing protection, or by construction of an overpass or underpass where a street, road, or highway intersects with a line of the railroad company within its jurisdiction, and demand is made upon the railroad company concerned, the political subdivision shall inform the department of such fact.

Upon receiving such notice, or upon its own determination, the department shall forthwith examine the crossing concerned, in conjunction with representatives of the political subdivision, to determine whether the position of such crossing on the priority list established under section 74-1312 should be adjusted.

**Source:** Laws 1979, LB 42, § 5; Laws 2017, LB339, § 252.

**74-1315 Department; utilize federal funds; matching funds; how paid.**

The department shall utilize any federal funds available in the construction of railroad grade crossing protection devices or other safety improvements. If funds are needed to match any federal funds the political subdivision in which the crossing is located shall contribute half of the matching funds needed but shall not be required to provide more than five percent of the total cost. If it is determined by the department that a railroad crossing safety project involving federal funds will result in ascertainable benefits to the railroad such railroad may be required to provide up to five percent of the total cost of the project. The balance of any matching funds needed shall be paid by the department from the Grade Crossing Protection Fund.

**Source:** Laws 1979, LB 42, § 6.

**74-1316 Railroad crossing accident; notice to department; when.**

When an accident occurs at any railroad crossing within the State of Nebraska which results in serious personal injury or loss of human life, the corporation operating the railroad which was involved in the accident shall within one day thereafter notify the department that an accident has occurred and shall promptly furnish to the department a copy of the same notice that it is required to furnish to the Nebraska Public Service Commission and the Federal Railroad Administration.

**Source:** Laws 1979, LB 42, § 7.

**74-1317 Grade Crossing Protection Fund; created; purpose; investment.**

In order to promote public safety at the intersection of railroad lines and all classes of highways, there is hereby created a special fund known as the Grade Crossing Protection Fund which shall be established in the state treasury to be used in furnishing financial assistance in the improvement of the safety of railroad grade crossings in this state, including the elimination of such crossings, the construction, substantial modification, or improvement of and the maintenance of automatic crossing protection at such grade crossings, and the construction and maintenance of overpasses and underpasses at railroad crossings. 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 1961, c. 359, § 1, p. 1126; R.S.Supp.,1961, § 75-219.01; Laws 1963, c. 241, § 1, p. 732; Laws 1969, c. 584, § 40, p. 2368; Laws 1973, LB 144, § 1; R.S.Supp.,1973, § 39-7,136; Laws 1975, LB 249, § 1; R.S.Supp.,1979, § 39-6,194; Laws 1979, LB 42, § 8; Laws 1995, LB 7, § 85.

**Cross References**

Nebraska Capital Expansion Act, see section 72-1269.

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

**74-1318 Grade Crossing Protection Fund; department; administer; procedure; division of cost; responsibility for protection devices; powers and duties.**

The department is hereby empowered to administer the funds deposited in the Grade Crossing Protection Fund as follows:

(1) If the department and the political subdivision with jurisdiction over the crossing agree that a grade crossing should be eliminated by closing the street,



road, or highway, the political subdivision making such closing shall receive five thousand dollars from the fund and five thousand dollars from the railroad involved and the actual cost of closure not to exceed twelve thousand dollars from the fund. If pursuant to section 74-1305 it is agreed by the department and the political subdivision that such crossing should be eliminated by the removal of such rail line, the political subdivision paying for such removal, if any, shall receive two thousand dollars or the actual cost thereof not to exceed twelve thousand dollars from the fund;

(2) Except as otherwise provided in section 74-1315, in order to facilitate and protect the interest of the public as a whole and to compensate for the statewide use of such crossings by the public, the department shall pay ninety-five percent of the cost of overpasses, underpasses, and automatic railroad grade crossing protection measures or devices from the fund for all such projects in which an agreement among the department, the railroad, and the political subdivision is executed on or after May 24, 1979, and the balance of the cost shall be borne by the political subdivision, except that in any county in which a railroad transportation safety district has been formed, such balance shall be borne entirely by the political subdivision. For all such projects in which an agreement among the department, the railroad, and the political subdivision was executed prior to May 24, 1979, the costs shall continue to be borne in the same manner as they were prior to such date;

(3) It shall be the sole responsibility of the railroad company involved to maintain all automatic railroad grade crossing protection devices existing in this state;

(4) The department shall allocate the amount to be borne by the fund for the cost of construction, installation, or substantial modification or improvement of the automatic devices for the protection of the railroad grade crossing concerned under this section and section 74-1317; and

(5) The department shall enter into and enforce agreements involving the fund and the supervision of the construction, installation, substantial modification or improvement, and maintenance of such overpasses, underpasses, and automatic safety devices for which any part of the cost is borne from the fund and the auditing and collection of the bills covering the cost thereof. The department is further authorized to enter into such contracts with any railroad companies and political subdivisions affected which are necessary to carry out this section and section 74-1317.

**Source:** Laws 1961, c. 359, § 3, p. 1127; R.S.Supp.,1961, § 75-219.01; Laws 1963, c. 241, § 2, p. 732; Laws 1965, c. 220, § 1, p. 641; Laws 1972, LB 866, § 1; Laws 1973, LB 144, § 2; R.S.Supp.,1973, § 39-7,137; Laws 1975, LB 249, § 2; R.S.Supp.,1979, § 39-6,195; Laws 1979, LB 42, § 9; Laws 1993, LB 477, § 1; Laws 2017, LB339, § 253.

**74-1319 Abandoned railroad line; removal of grade crossing protection devices.**

Whenever a railroad line is abandoned, the department may remove grade crossing protection devices therefrom to protect the state's investment therein.

**Source:** Laws 1979, LB 42, § 10; Laws 2017, LB339, § 254.

**74-1320 Excise tax on railroads transporting freight; rate; collection; report; payment.**

(1) There is hereby levied an excise tax on each railroad transporting freight in the State of Nebraska. Such tax shall be levied at the rate of seven and one-half cents for each train mile operated by such railroad in the state and one hundred dollars for each public grade crossing on the line of such railroad in the state. Such tax shall be independent of any assessment of costs for benefits received by the railroad from projects for the construction, rehabilitation, relocation, or modification of railroad grade separation facilities. The Department of Revenue shall collect the tax due pursuant to this section from each railroad transporting freight within the state.

(2) On each March 1, each such railroad shall submit to the Department of Revenue a report of its total train miles operated within the state during the previous January 1 through December 31 and the number of public grade crossings on its line in the state at the close of the previous year. All taxes shall be due on the date of reporting and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(3) As used in this section, train mile shall mean each mile traveled by a train in this state regardless of the number of cars in such train.

**Source:** Laws 1979, LB 42, § 12; Laws 1980, LB 507, § 30; Laws 1981, LB 190, § 1; Laws 1984, LB 348, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 11.

**74-1321 Excise tax on railroad transporting freight; similar appropriation; how used.**

All revenue derived from the tax levied pursuant to section 74-1320, together with such other funds as may be appropriated by the state for the same purposes, shall be placed in the Grade Crossing Protection Fund and may be allocated and expended in the same manner as other money in such fund for the purpose of constructing, rehabilitating, relocating, or modifying railroad grade separation facilities.

**Source:** Laws 1979, LB 42, § 13; Laws 1981, LB 190, § 2.

**74-1322 Failure to file report or pay taxes; violation; penalty.**

Failure to file a report required by section 74-1320, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each month the report is overdue or the payment is delinquent.

**Source:** Laws 1979, LB 42, § 14.

**74-1323 Railroad car; obstructing view at crossing; violation; penalty.**

(1) Unless otherwise provided by city or village ordinance, the Public Service Commission, upon complaint or on its own motion, as to the crossing which is the subject of the complaint or motion, may direct that at such crossing any railroad car that is stored or parked on a railroad track which may be obstructing or obscuring the traveling public's view of any oncoming train be stored or parked at a minimum distance from the crossing of such railroad and

public road. The minimum distance shall be that deemed by the commission to be reasonable and necessary to provide a sight distance at the crossing adequate to protect the safety of the traveling public, but in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonably conducting his or her business.

(2) Any company, its officers, agents, or employees, or any other person subject to subsection (1) of this section who fails, neglects, or refuses to promptly comply with an order of the commission issued under this section shall be guilty of a Class IV misdemeanor, but shall be fined not more than two hundred dollars for each offense. Each day of such neglect, refusal, or failure shall constitute a separate offense.

**Source:** Laws 1984, LB 790, § 1.

(c) NEBRASKA HIGHWAY-RAIL CROSSING SAFETY COMMITTEE

**74-1324 Repealed.** Laws 1998, LB 899, § 1.

**74-1325 Repealed.** Laws 1998, LB 899, § 1.

**74-1326 Repealed.** Laws 1998, LB 899, § 1.

**74-1327 Repealed.** Laws 1998, LB 899, § 1.

**74-1328 Repealed.** Laws 1998, LB 899, § 1.

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

**74-1329 Act, how cited.**

Sections 74-1329 to 74-1343 shall be known and may be cited as the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act.

**Source:** Laws 1997, LB 255, § 1.

**74-1330 Legislative intent.**

The Legislature hereby recognizes that the State of Nebraska leads the nation in the average number of highway-rail grade crossings per mile and that the State of Nebraska is traversed by a rail corridor that leads the nation in density of train traffic, in addition to other rail corridors in the state that also experience high levels of traffic. The Legislature further recognizes that these factors combine to create a serious and growing threat to public safety which must be addressed in a comprehensive manner that reflects the input and interests of local communities, the general motoring public, commercial highway users, and shippers of agricultural and other types of commodities who rely on rail transportation for efficient, timely transport of their goods.

It is the intent of the Legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency.

**Source:** Laws 1997, LB 255, § 2.

**74-1331 Bridges; construction; dimensions; maintenance; violation; penalty.**

Any person who operates a railroad in the State of Nebraska shall construct all bridges on its railway so that each bridge over a running stream in this state has an opening below high water line the area of which is sufficient to allow the free and unobstructed passage of the water of such running stream at extreme high water state. If in the case of any given bridge satisfactory proof is made to the Department of Transportation that the dimensions prescribed in this section are greater than are necessary to permit the unimpeded passage of the water under such bridge at high water, the department may authorize construction of the bridge with dimensions less than those prescribed in this section. Each railroad shall maintain and keep in good repair all bridges and abutments which the railroad constructs to enable its tracks to pass over or under any turnpike, road, canal, watercourse, or other way. Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class III misdemeanor.

**Source:** Laws 1963, c. 425, art. IV, § 27, p. 1408; Laws 1994, LB 414, § 93; R.S.1943, (1996), § 75-427; Laws 1997, LB 255, § 3; Laws 2017, LB339, § 255.

**74-1332 Crossings; jurisdiction of department.**

The Department of Transportation shall have jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state, except as provided in sections 74-1338 to 74-1340, and shall adopt and promulgate such rules and regulations for the construction, repair, and maintenance of the crossings as the department deems adequate and sufficient for the protection and necessity of the public.

**Source:** Laws 1963, c. 425, art. IV, § 10, p. 1401; R.S.1943, (1996), § 75-410; Laws 1997, LB 255, § 4; Laws 2017, LB339, § 256.

The Nebraska Public Service Commission has no authority to order a railroad company to construct a crossing over its railroad at a point within the limits of a city or village where no street has been opened. The Nebraska Public Service Commission does not have jurisdiction over questions of law arising out of contract or title to real estate. The Nebraska Public Service

Commission has no jurisdiction over crossings of railroads within incorporated villages, towns, and cities, except to provide regulations for the safety and convenience of the public. *Davis-Moore Industrial Park v. Missouri Pacific Railroad Co.*, 210 Neb. 652, 316 N.W.2d 593 (1982).

**74-1333 Crossings; public; maintenance.**

The owner of any railroad tracks which are crossed by a public road shall make and keep in good repair good and sufficient crossings for such road over its tracks, including all the grading, bridges, ditches, and culverts that may be necessary within its right-of-way. Such crossings shall be not less than twenty feet wide and shall be solidly constructed with no openings or filled spaces except such as are necessary for the track. The railroad crossings shall be made of durable material equal to the height of the railroad track. The Department of Transportation may, upon proper investigation and hearing, impose additional reasonable requirements as the circumstances may warrant.

**Source:** Laws 1963, c. 425, art. IV, § 11, p. 1402; Laws 1994, LB 414, § 86; R.S.1943, (1996), § 75-411; Laws 1997, LB 255, § 5; Laws 2017, LB339, § 257.

**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 Transportation 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 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; Laws 2017, LB339, § 258.

#### **74-1335 Crossings; private; railroad; duties.**

Whenever any person owns land on both sides of the right-of-way of any railroad, such railroad shall provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. Any interested landowner with land on both sides of the right-of-way of any railroad may file written complaint with the Department of Transportation against any such railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use it, and the department thereupon shall make such investigation, hold such hearing, and issue such orders as it deems necessary, proper, and adequate. If circumstances warrant, the department may require overhead, underground, or grade crossings and wing fences at underground crossings or may require existing crossings to be relocated so as to be safe to those who use them, but when a special crossing involves an expenditure of more than one thousand five hundred dollars, the landowner shall bear one-half the expenses in excess of one thousand five hundred dollars.

**Source:** Laws 1963, c. 425, art. IV, § 13, p. 1402; Laws 1994, LB 414, § 88; R.S.1943, (1996), § 75-413; Laws 1997, LB 255, § 7; Laws 2017, LB339, § 259.

Railroad was under duty to deceased truck driver, a member of crew repairing gas pipelines on farm property, to exercise reasonable care at private farm road crossing being used by decedent with permission of landowner. *Kloewer v. Burlington Northern, Inc.*, 512 F.2d 300 (8th Cir. 1975).

**74-1336 Crossings; complaints; hearing; order; rules and regulations.**

(1) Whenever a complaint is filed in writing with the Department of Transportation by the duly authorized officers of any incorporated village or city or by the owner or operator of any railroad track, relative to any crossing within the affected village or city, praying for relief from the matters complained of, the department shall hold a hearing and shall make such order as the facts warrant. The findings of the department, subject to the right of appeal, shall be binding on the parties to the suit.

(2) The department shall adopt and promulgate rules and regulations for the construction, repair, and maintenance of all crossings, both public and private, across, over, and under all railroads within the corporate limits of any incorporated village or city. The rules and regulations shall be substantially the same as the rules and regulations under section 74-1332.

**Source:** Laws 1963, c. 425, art. IV, § 14, p. 1403; Laws 1994, LB 414, § 89; R.S.1943, (1996), § 75-414; Laws 1997, LB 255, § 8; Laws 2003, LB 259, § 1; Laws 2017, LB339, § 260.

The Nebraska Public Service Commission has no authority to order a railroad company to construct a crossing over its railroad at a point within the limits of a city or village where no street has been opened. The Nebraska Public Service Commission does not have jurisdiction over questions of law arising out of contract or title to real estate. *Davis-Moore Industrial Park v. Missouri Pacific Railroad Co.*, 210 Neb. 652, 316 N.W.2d 593 (1982).

**74-1337 Crossings; public; county board; agreement.**

Whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages, the owner of the railroad tracks and the county board of the county in which such crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may also agree upon the relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or construction between the owner of the railroad tracks and the county or other public authority in interest.

**Source:** Laws 1963, c. 425, art. IV, § 15, p. 1403; Laws 1994, LB 414, § 90; R.S.1943, (1996), § 75-415; Laws 1997, LB 255, § 9.

**74-1338 Crossings; public; failure of county board and railroad to agree; power of department.**

If the owner of the railroad track and the county board or other public authority in interest fail to agree upon any of the matters or things mentioned in section 74-1337, either the owner or the county board or other public authority in interest, in the name of the county or other public authority in interest, may file an application with the Department of Transportation, setting forth such fact together with a statement of the change, alteration, relocation, or construction it wants, the estimated cost thereof, and such other facts as may be relevant and asking the department to enter an order directing that the change, alteration, relocation, or construction be made. The department shall proceed to hear the application in the manner provided by law, and if it finds that the application should be granted, it shall enter an order accordingly, designating in the order what portion of the expense of complying with the

order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any.

**Source:** Laws 1963, c. 425, art. IV, § 16, p. 1404; Laws 1994, LB 414, § 91; R.S.1943, (1996), § 75-416; Laws 1997, LB 255, § 10; Laws 2017, LB339, § 261.

**74-1339 Crossings; agreement of department; county board or other public authority; powers.**

The county board or other public authority in interest may carry out any such agreement and may establish, vacate, or relocate any public road so as to comply with any such agreement. The procedure shall be that provided by sections 39-1701 to 39-1731, insofar as the same is applicable, but no petition shall be necessary or required.

**Source:** Laws 1963, c. 425, art. IV, § 17, p. 1404; R.S.1943, (1996), § 75-417; Laws 1997, LB 255, § 11.

**74-1340 Crossings; department orders; violation; penalty.**

When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the Department of Transportation issued under sections 74-1332 to 74-1339 or fails, refuses, or neglects to comply with such sections after the department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each week of such neglect, refusal, or failure shall constitute a separate offense.

**Source:** Laws 1963, c. 425, art. IV, § 18, p. 1404; Laws 1994, LB 414, § 92; R.S.1943, (1996), § 75-418; Laws 1997, LB 255, § 12; Laws 2017, LB339, § 262.

**74-1341 Grade crossing safety; responsibility.**

The Department of Transportation, which possesses the requisite engineering expertise, highway and rail planning function, and highway safety mission and is the repository for state and federal funding for both rail and highway projects, shall be the agency responsible for grade crossing safety.

**Source:** Laws 1997, LB 255, § 13; Laws 2017, LB339, § 263.

**74-1342 Comprehensive public safety program; department; duties.**

(1) The Department of Transportation shall adopt and promulgate rules and regulations establishing a comprehensive public safety program to deal with problems associated with public and private highway-rail grade crossings. In designing such a program, the department shall establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. The department shall actively solicit input from the public and from representatives of county and municipal governments, the Federal Highway Administration, the Federal Railroad Administration, and any other individuals or entities with an interest in grade crossing safety.

(2) The grade crossing safety assessment process may include the following factors:

(a) Volume of trains;

- (b) Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing;
- (c) Number of tracks at the crossing;
- (d) Geometry of the crossing, including acute angles;
- (e) Sight-distance restrictions, if any;
- (f) Train and motor vehicle speed;
- (g) Accident history;
- (h) Character of proximate road network, including distance and travel time to adjacent crossings;
- (i) Frequency and duration of roadway blockage by trains, including citation history;
- (j) Emergency response routes, including alternatives;
- (k) Economic impact of crossing;
- (l) Current and foreseeable development in the vicinity of the crossing; and
- (m) Location of schools and hospitals.

**Source:** Laws 1997, LB 255, § 14; Laws 2017, LB339, § 264.

**74-1343 Assessment process; recommendations; department; duties.**

The Department of Transportation shall establish the grade crossing safety assessment process no later than twelve months after September 13, 1997, and shall recommend to the Legislature no later than eighteen months after September 13, 1997, an equitable formula for funding grade crossing risk abatement.

**Source:** Laws 1997, LB 255, § 15; Laws 2017, LB339, § 265.

**ARTICLE 14**

**LIGHT-DENSITY RAIL LINES**

Section	
74-1401.	Repealed. Laws 2011, LB 259, § 5.
74-1402.	Repealed. Laws 2011, LB 259, § 5.
74-1402.01.	Repealed. Laws 2011, LB 259, § 5.
74-1403.	Repealed. Laws 2011, LB 259, § 5.
74-1404.	Repealed. Laws 2011, LB 259, § 5.
74-1405.	Repealed. Laws 2011, LB 259, § 5.
74-1405.01.	Repealed. Laws 2011, LB 259, § 5.
74-1405.02.	Repealed. Laws 2011, LB 259, § 5.
74-1405.03.	Repealed. Laws 2011, LB 259, § 5.
74-1406.	Repealed. Laws 2011, LB 259, § 5.
74-1407.	Repealed. Laws 1991, LB 783, § 35.
74-1407.01.	Repealed. Laws 2011, LB 259, § 5.
74-1408.	Repealed. Laws 2011, LB 259, § 5.
74-1409.	Repealed. Laws 1991, LB 783, § 35.
74-1410.	Repealed. Laws 2011, LB 259, § 5.
74-1410.01.	Repealed. Laws 2011, LB 259, § 5.
74-1411.	Repealed. Laws 2011, LB 259, § 5.
74-1411.01.	Repealed. Laws 2011, LB 259, § 5.
74-1412.	Repealed. Laws 2011, LB 259, § 5.
74-1412.01.	Repealed. Laws 2011, LB 259, § 5.
74-1413.	Repealed. Laws 2011, LB 259, § 5.
74-1414.	Repealed. Laws 2011, LB 259, § 5.
74-1415.	Repealed. Laws 2011, LB 259, § 5.



Section

- 74-1415.01. Repealed. Laws 2011, LB 259, § 5.
- 74-1415.02. Repealed. Laws 1996, LB 463, § 33.
- 74-1415.03. Repealed. Laws 2011, LB 259, § 5.
- 74-1415.04. Repealed. Laws 2011, LB 259, § 5.
- 74-1415.05. Repealed. Laws 2011, LB 259, § 5.
- 74-1415.06. Repealed. Laws 2011, LB 259, § 5.
- 74-1416. Repealed. Laws 1991, LB 783, § 35.
- 74-1417. Repealed. Laws 1991, LB 783, § 35.
- 74-1418. Repealed. Laws 1991, LB 783, § 35.
- 74-1419. Repealed. Laws 1991, LB 783, § 35.
- 74-1419.01. Repealed. Laws 1996, LB 463, § 33.
- 74-1419.02. Repealed. Laws 2011, LB 259, § 5.
- 74-1419.03. Repealed. Laws 1996, LB 463, § 33.
- 74-1420. Repealed. Laws 2011, LB 259, § 5.
- 74-1420.01. Repealed. Laws 2011, LB 259, § 5.
- 74-1420.02. Repealed. Laws 2011, LB 259, § 5.
- 74-1420.03. Repealed. Laws 2011, LB 259, § 5.
- 74-1421. Transferred to section 74-1415.01.
- 74-1422. Transferred to section 74-1420.02.
- 74-1423. Repealed. Laws 1991, LB 783, § 35.
- 74-1424. Repealed. Laws 1991, LB 783, § 35.
- 74-1425. Repealed. Laws 1991, LB 783, § 35.
- 74-1426. Repealed. Laws 1991, LB 783, § 35.
- 74-1427. Political subdivision; expend local tax funds; election; procedure.
- 74-1428. Repealed. Laws 1991, LB 783, § 35.
- 74-1428.01. Repealed. Laws 2011, LB 259, § 5.
- 74-1428.02. Repealed. Laws 2011, LB 259, § 5.
- 74-1428.03. Repealed. Laws 2011, LB 259, § 5.
- 74-1429. Repealed. Laws 2011, LB 259, § 5.

**74-1401 Repealed. Laws 2011, LB 259, § 5.**

**74-1402 Repealed. Laws 2011, LB 259, § 5.**

**74-1402.01 Repealed. Laws 2011, LB 259, § 5.**

**74-1403 Repealed. Laws 2011, LB 259, § 5.**

**74-1404 Repealed. Laws 2011, LB 259, § 5.**

**74-1405 Repealed. Laws 2011, LB 259, § 5.**

**74-1405.01 Repealed. Laws 2011, LB 259, § 5.**

**74-1405.02 Repealed. Laws 2011, LB 259, § 5.**

**74-1405.03 Repealed. Laws 2011, LB 259, § 5.**

**74-1406 Repealed. Laws 2011, LB 259, § 5.**

**74-1407 Repealed. Laws 1991, LB 783, § 35.**

**74-1407.01 Repealed. Laws 2011, LB 259, § 5.**

**74-1408 Repealed. Laws 2011, LB 259, § 5.**

**74-1409 Repealed. Laws 1991, LB 783, § 35.**

**74-1410 Repealed. Laws 2011, LB 259, § 5.**

**74-1410.01 Repealed. Laws 2011, LB 259, § 5.**

- 74-1411 Repealed. Laws 2011, LB 259, § 5.
- 74-1411.01 Repealed. Laws 2011, LB 259, § 5.
- 74-1412 Repealed. Laws 2011, LB 259, § 5.
- 74-1412.01 Repealed. Laws 2011, LB 259, § 5.
- 74-1413 Repealed. Laws 2011, LB 259, § 5.
- 74-1414 Repealed. Laws 2011, LB 259, § 5.
- 74-1415 Repealed. Laws 2011, LB 259, § 5.
- 74-1415.01 Repealed. Laws 2011, LB 259, § 5.
- 74-1415.02 Repealed. Laws 1996, LB 463, § 33.
- 74-1415.03 Repealed. Laws 2011, LB 259, § 5.
- 74-1415.04 Repealed. Laws 2011, LB 259, § 5.
- 74-1415.05 Repealed. Laws 2011, LB 259, § 5.
- 74-1415.06 Repealed. Laws 2011, LB 259, § 5.
- 74-1416 Repealed. Laws 1991, LB 783, § 35.
- 74-1417 Repealed. Laws 1991, LB 783, § 35.
- 74-1418 Repealed. Laws 1991, LB 783, § 35.
- 74-1419 Repealed. Laws 1991, LB 783, § 35.
- 74-1419.01 Repealed. Laws 1996, LB 463, § 33.
- 74-1419.02 Repealed. Laws 2011, LB 259, § 5.
- 74-1419.03 Repealed. Laws 1996, LB 463, § 33.
- 74-1420 Repealed. Laws 2011, LB 259, § 5.
- 74-1420.01 Repealed. Laws 2011, LB 259, § 5.
- 74-1420.02 Repealed. Laws 2011, LB 259, § 5.
- 74-1420.03 Repealed. Laws 2011, LB 259, § 5.
- 74-1421 Transferred to section 74-1415.01.
- 74-1422 Transferred to section 74-1420.02.
- 74-1423 Repealed. Laws 1991, LB 783, § 35.
- 74-1424 Repealed. Laws 1991, LB 783, § 35.
- 74-1425 Repealed. Laws 1991, LB 783, § 35.
- 74-1426 Repealed. Laws 1991, LB 783, § 35.
- 74-1427 Political subdivision; expend local tax funds; election; procedure.

(1) If the governing body of a political subdivision determines that it is necessary or beneficial for the vitality of such political subdivision to expend local tax funds for rehabilitation or improvement of a light-density rail line or rail facility construction, including the issuance of bonds, the governing body shall by resolution place the proposition for such expenditure or bond issue on the general or primary election ballot or in odd-numbered years only call for a special election in such political subdivision for the purpose of approving such expenditure of local tax funds.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such local tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in such political subdivision at least once each week for three weeks prior to such election. If no such newspaper exists, notice shall be posted in at least three public places in the political subdivision for at least three weeks prior to such election.

(4) The proposition appearing on the ballot in any election shall state the purpose for which such local tax funds will be spent, the amount of local tax funds to be so expended, and the source from which the revenue will be raised. Such proposition shall be adopted if approved by a majority of those voting in such election.

(5) If a special election is called, the governing body shall prescribe the form of the ballot to be used.

(6) For purposes of this section:

(a) Facility means the track, ties, roadbed, and related structures, including terminals, team tracks and appurtenances, bridges, tunnels, and other structures used or usable for rail service operations;

(b) Light-density rail line means any rail line classified as a light-density line by the United States Department of Transportation;

(c) Rail facility construction means the construction of rail or rail-related facilities, including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines, for the purpose of improving the quality and efficiency of rail freight service; and

(d) Rehabilitation or improvement means replacing, repairing, or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a rail line.

**Source:** Laws 1980, LB 507, § 27; Laws 1991, LB 783, § 28; Laws 1996, LB 463, § 30; Laws 2011, LB259, § 3.

**74-1428 Repealed. Laws 1991, LB 783, § 35.**

**74-1428.01 Repealed. Laws 2011, LB 259, § 5.**

**74-1428.02 Repealed. Laws 2011, LB 259, § 5.**

**74-1428.03 Repealed. Laws 2011, LB 259, § 5.**

**74-1429 Repealed. Laws 2011, LB 259, § 5.**

**ARTICLE 15**

**NEBRASKA TRANSIT AND RAIL ADVISORY COUNCIL ACT**

Section

- 74-1501. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1502. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1503. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1504. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1505. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1506. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1507. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1508. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1509. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1510. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1511. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1512. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1513. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1514. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

**74-1501 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1502 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1503 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1504 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1505 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1506 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1507 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1508 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1509 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1510 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1511 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1512 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1513 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**74-1514 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.**

**ARTICLE 16**

**MIDWEST INTERSTATE PASSENGER RAIL COMPACT**

Section

- 74-1601. Repealed. Laws 2015, LB317, § 2.
- 74-1602. Repealed. Laws 2015, LB317, § 2.
- 74-1603. Repealed. Laws 2015, LB317, § 2.

**74-1601 Repealed. Laws 2015, LB317, § 2.**

**74-1602 Repealed. Laws 2015, LB317, § 2.**

**74-1603 Repealed. Laws 2015, LB317, § 2.**



**PUBLIC SERVICE COMMISSION**

**CHAPTER 75**  
**PUBLIC SERVICE COMMISSION**

Article.

1. Organization and Composition, Regulatory Scope, and Procedure. 75-101 to 75-160.
2. Air Carriers. 75-201, 75-202.
3. Motor Carriers.
  - (a) Intrastate Motor Carriers. 75-301 to 75-322.
  - (b) Transportation Network Company. 75-323 to 75-343.
  - (c) Tractor Engine Tests. 75-344 to 75-347. Transferred.
  - (d) Interstate Motor Carriers. 75-348 to 75-358. Repealed.
  - (e) Safety Regulations. 75-359 to 75-369.07.
  - (f) Enforcement. 75-370, 75-371.
  - (g) Interstate Operating Authority Agreement Act. 75-372 to 75-380. Repealed.
  - (h) Restrictions on Hours on Duty. 75-381, 75-382. Repealed.
  - (i) Transport of Hazardous Material. 75-383, 75-384. Repealed.
  - (j) Division of Motor Carrier Services. 75-385 to 75-390.
  - (k) Motor Carrier Transportation Contracts. 75-391.
  - (l) Unified Carrier Registration Plan and Agreement. 75-392 to 75-399.
4. Rail Carriers. 75-401 to 75-440.
5. Pipeline Carriers. 75-501 to 75-503.
6. Telegraphs and Telephones. Transferred or Repealed.
7. Transmission Lines. 75-701 to 75-724.
8. Miscellaneous. 75-801 to 75-803.
9. Grain Dealer Act. 75-901 to 75-910.
10. Water Service Regulation. 75-1001 to 75-1012.

**Cross References**

**Constitutional provisions:**

- Creation, see Article IV, section 20, Constitution of Nebraska.  
Powers and duties, see Article IV, section 20, Constitution of Nebraska.  
**Grain moisture measuring devices**, see sections 89-1,104 to 89-1,108.  
**Grain Warehouse Act**, see section 88-525.  
**Jurisdiction over utilities disputes**, State Natural Gas Regulation Act, see section 66-1801.  
**Municipal Natural Gas System Condemnation Act**, see section 19-4624.  
**Nebraska Uniform Standards for Modular Housing Units Act**, see section 71-1555.  
**Railroads**, generally, see Chapter 74.  
**State Natural Gas Regulation Act**, see section 66-1801.  
**Telecommunications**, generally, see Chapter 86.  
**Uniform Standard Code for Manufactured Homes and Recreational Vehicles**, see section 71-4601.

**ARTICLE 1**

**ORGANIZATION AND COMPOSITION, REGULATORY  
SCOPE, AND PROCEDURE**

Section

- 75-101. Public Service Commission; members; qualifications; terms, defined.  
75-101.01. Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.  
75-101.02. Public Service Commission; districts; population figures and maps; basis.  
75-101.03. Repealed. Laws 2001, LB 855, § 5.  
75-102. Commissioners; official oath.  
75-103. Vacancies; appointment.  
75-104. Commissioners; salary; commissioners and employees; expenses; when allowed.  
75-104.01. Commissioner; salary increase; when effective.

## PUBLIC SERVICE COMMISSION

- Section
- 75-105. Seal; office; employees.
- 75-106. Executive director; qualifications; salary; duties; fees for transcripts.
- 75-107. Repealed. Laws 1981, LB 545, § 52.
- 75-108. Attorney General; act as legal advisor.
- 75-109. Commission; regulatory powers; scope.
- 75-109.01. Jurisdiction.
- 75-110. Rules and regulations.
- 75-110.01. Application or petition for authority or relief; procedures.
- 75-111. Commission; investigatory powers.
- 75-112. Commissioners and examiners; powers; certification of official acts.
- 75-113. Records; prescribe; inspection.
- 75-114. Records; refusal to permit examination; penalty.
- 75-115. Examinations and inspections; authorized; duty and power to repair; notice; injunctions; carrier enforcement division; powers.
- 75-116. Annual report; filing requirements; fee.
- 75-117. Order of commission; failure to comply; penalty.
- 75-118. Commission; duties.
- 75-118.01. Certificate, permit, tariff, rule, or regulation; interpretation; jurisdiction.
- 75-119. Rate, rule, or regulation; petition to prescribe or fix; procedure.
- 75-120. Repealed. Laws 1967, c. 479, § 22.
- 75-121. Emergency rate orders; when authorized.
- 75-122. Repealed. Laws 1967, c. 479, § 22.
- 75-122.01. Transferred to section 75-134.01.
- 75-122.02. Repealed. Laws 1982, LB 592, § 2.
- 75-123. Rates; hearing; criteria.
- 75-124. Rates; publication.
- 75-125. Rate schedule; failure to publish; mandamus.
- 75-126. Unjust discrimination and practices prohibited; exceptions.
- 75-127. Unjust discrimination and practices; violations; penalties.
- 75-128. Hearings; when held; filing fee.
- 75-129. Sessions and hearings; when and where held.
- 75-130. Witnesses; failure to testify or comply with subpoena; penalty; depositions; witness and other fees.
- 75-130.01. Contested case; ex parte communication prohibited; applicability of section.
- 75-131. Common or contract carriers; jurisdictional utility; complaint of violation; service; other proceedings.
- 75-132. Complaint; hearing; notice; order.
- 75-132.01. Exclusive original jurisdiction; appeal.
- 75-133. Regulated parties; proceeding by commission upon own motion; hearing; order.
- 75-134. Commission order; requirements; when effective; rate order under State Natural Gas Regulation Act; appeal; stay enforcement.
- 75-134.01. Order; enjoin, when.
- 75-134.02. Motion for reconsideration.
- 75-135. Commission order; authentication.
- 75-136. Orders; right to appeal; manner and time; advancement of appeal of rate order under State Natural Gas Regulation Act.
- 75-136.01. Repealed. Laws 2003, LB 187, § 37.
- 75-137. Repealed. Laws 2003, LB 187, § 37.
- 75-138. Repealed. Laws 2003, LB 187, § 37.
- 75-139. Rate order; appeal; when effective; supersedeas bond; effect; applicability of section.
- 75-139.01. Person, defined.
- 75-140. Orders; enforcement; petition; notice.
- 75-141. Order; proceeding to enforce; duty of Attorney General.
- 75-142. Order; enforcement; procedure.
- 75-143. Order; appeal; effect; attorney's fees.
- 75-144. Order; violation; injunction; penalty.
- 75-145. Repealed. Laws 2000, LB 1285, § 26.
- 75-146. Common carrier other than a railroad; consolidation or increase in stock; jurisdiction of commission.



Section	
75-147.	Repealed. Laws 1994, LB 414, § 137.
75-148.	Common carrier; issuance of securities; conditions.
75-149.	Consolidation; securities; issuance; limitation.
75-150.	Securities; issuance; fees; expenses.
75-151.	Securities; violation; penalty.
75-152.	Common carriers; consignor; designation of means and routing of shipment.
75-153.	Common carriers; consignee; designation of means and routing of shipment; exception.
75-154.	Common carriers; consignor; violation of shipping instructions; damages.
75-155.	Violations; general penalty.
75-156.	Civil penalty; procedure; order; appeal.
75-157.	Hearing; order; requirements.
75-158.	Unpaid civil penalty; how treated.
75-159.	Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment.
75-160.	Wireless telecommunications service; registry for complaints regarding lack of appropriate coverage; use.

**75-101 Public Service Commission; members; qualifications; terms, defined.**

(1) The members of the Public Service Commission shall be resident citizens of this state, registered voters, and, if members of or practitioners in any profession, in good standing according to the established standards of such profession. The members of the Public Service Commission shall be elected as provided in section 32-509. A candidate for the office of public service commissioner shall be a resident of the district from which he or she seeks election. Each public service commissioner shall be a resident of the district from which he or she is elected. Removal from the district shall cause a vacancy in the office of public service commissioner for the unexpired term.

(2) No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier or jurisdictional utility in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to Chapter 75 or 86. If any commissioner becomes so interested after election or appointment, his or her office shall become vacant, except that if any commissioner becomes so interested otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and failing to do so, his or her office shall become vacant.

(3) A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, means the Public Service Commission; and

(b) Commissioner means a member of the commission.

**Source:** Laws 1963, c. 425, art. I, § 1, p. 1354; Laws 1967, c. 476, § 1, p. 1472; Laws 1984, LB 623, § 14; Laws 1994, LB 76, § 587; Laws 1994, LB 414, § 26; Laws 2002, LB 1105, § 481; Laws 2003, LB 790, § 60.

Subsections (1) and (2) of this section set out the eligibility requirements to hold the office of commissioner. Subsection (3) sets out restrictions upon those who hold that office: They may not hold another office or engage in another occupation while holding the office of commissioner. *Rosberg v. Vap*, 284 Neb. 104, 815 N.W.2d 867 (2012).

Under subsection (1), a person is eligible to be a commissioner if he or she is in good standing in any profession of which he or she is a member or practitioner—outside of the duties imposed upon a commissioner while holding office. *Rosberg v. Vap*, 284 Neb. 104, 815 N.W.2d 867 (2012).

**75-101.01 Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.**

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps PSC11-1, PSC11-2, PSC11-3, PSC11-4, and PSC11-5, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB700.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

**Source:** Laws 1963, c. 174, § 1, p. 596; Laws 1971, LB 955, § 1; Laws 1981, LB 551, § 1; R.S.1943, (1987), § 5-107; Laws 1991, LB 618, § 1; Laws 2001, LB 855, § 2; Laws 2011, LB700, § 1.

**75-101.02 Public Service Commission; districts; population figures and maps; basis.**

For purposes of section 75-101.01, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

**Source:** Laws 1971, LB 955, § 2; Laws 1981, LB 551, § 2; R.S.1943, (1987), § 5-107.01; Laws 1991, LB 618, § 2; Laws 2001, LB 855, § 3; Laws 2011, LB700, § 2.

**75-101.03 Repealed. Laws 2001, LB 855, § 5.**

**75-102 Commissioners; official oath.**

Before entering upon the duties of office, each of the commissioners shall take and subscribe to the oath of office prescribed in the Constitution of Nebraska and shall, in addition thereto, swear that he or she is not directly or indirectly interested in any common carrier or jurisdictional utility, subject to the provisions of Chapter 75, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any such common carrier or jurisdictional utility, and

that he or she will, to the best of his or her ability, faithfully and justly execute and enforce the duties devolving upon him or her as such commissioner, which oath shall be filed with the Secretary of State.

**Source:** Laws 1963, c. 425, art. I, § 2, p. 1355; Laws 2003, LB 790, § 61.

**75-103 Vacancies; appointment.**

The Governor shall fill all vacancies in the office of commissioner by appointment, and a person so appointed shall fill such office for the unexpired term.

**Source:** Laws 1963, c. 425, art. I, § 3, p. 1355.

**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.

**75-104.01 Commissioner; salary increase; when effective.**

Section 75-104 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for public service commissioners, and to permit a change in such salaries as soon

as the same may become operative under the Constitution of the State of Nebraska.

**Source:** Laws 1967, c. 477, § 2, p. 1474.

**75-105 Seal; office; employees.**

The commissioners shall be known collectively as the Public Service Commission and shall have a seal, which may be either an engraved or ink stamp seal, similar to the seal of this state, with the words Public Service Commission of Nebraska included thereon. They shall be furnished with offices and with necessary furniture, stationery, and supplies. Immediately after a newly elected member of the commission has taken the oath of office prescribed in section 75-102, the commission shall meet at Lincoln and organize. The commission shall also appoint employees as may be necessary to perform the duties which may be required of the commission.

**Source:** Laws 1963, c. 425, art. I, § 5, p. 1356; Laws 1971, LB 653, § 7; Laws 1994, LB 414, § 28.

**75-106 Executive director; qualifications; salary; duties; fees for transcripts.**

Any person who is eligible to hold the office of commissioner shall also be eligible to hold the office of executive director. The salary of the executive director shall be fixed by the commission, payable monthly. The executive director shall take the same oath as the commissioners. The executive director shall keep full and correct minutes of all transactions and proceedings of the commission, and it shall be his or her duty to, upon request and being paid the lawful fees therefor, furnish a transcript, duly authenticated by the commission, of any public record of the commission and to perform such duties as may be required by the commission. The executive director shall charge such fees for furnishing a transcript as are allowed by law on appeal from the district court to the Court of Appeals and shall turn such fees into the fund provided for the expenses of the commission.

**Source:** Laws 1963, c. 425, art. I, § 6, p. 1356; Laws 1965, c. 445, § 1, p. 1414; Laws 1967, c. 478, § 1, p. 1474; Laws 1991, LB 732, § 128; Laws 1994, LB 414, § 29.

**75-107 Repealed. Laws 1981, LB 545, § 52.**

**75-108 Attorney General; act as legal advisor.**

The commission may consult the Attorney General with reference to any matter upon which it may require advice, and the Attorney General shall give such advice as the commission may require and perform such other services within the line of duty as the commission may require.

**Source:** Laws 1963, c. 425, art. I, § 8, p. 1357; Laws 1994, LB 414, § 30.

**75-109 Commission; regulatory powers; scope.**

Except as provided in the Agricultural Suppliers Lease Protection Act and sections 86-124 and 86-143, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in

the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

**Source:** Laws 1963, c. 425, art. I, § 9, p. 1357; Laws 1965, c. 446, § 1, p. 1415; Laws 1986, LB 835, § 12; Laws 1989, LB 95, § 4; Laws 1994, LB 414, § 31; Laws 1995, LB 424, § 2; Laws 1997, LB 660, § 2; Laws 1999, LB 150, § 12; Laws 2000, LB 1285, § 1; Laws 2002, LB 435, § 9; Laws 2002, LB 1105, § 483; Laws 2003, LB 790, § 62.

**Cross References**

**Agricultural Suppliers Lease Protection Act**, see section 2-5501.

The phrase "provided by law" means prescribed or provided by statute, and thus, the Nebraska Public Service Commission's statutory authority over any particular common or contract carrier must be derived from some statute other than this section. *Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist.*, 256 Neb. 479, 590 N.W.2d 840 (1999).

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

Tacking is an extension of the authorized service under regulation of the Nebraska State Railway Commission, and the right

to tack does not exist unless granted by the commission. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

Powers of Railway Commission hereunder are not limited by statute authorizing enforcement by injunction in absence of specific legislation to that effect. *Nebraska State Railway Commission v. Chicago & N.W. Ry. Co.*, 187 Neb. 369, 191 N.W.2d 438 (1971).

A mutual or cooperative company furnishing intrastate communication services for benefit of its stockholders held, under circumstances, to be a common carrier subject to jurisdiction of railway commission. *American Communication Co., Inc. v. Buntmeyer*, 184 Neb. 220, 166 N.W.2d 116 (1969).

**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 75-343, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;
- (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. If the provisions of Chapter 75 are inconsistent with the provisions of the State 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; Laws 2011, First Spec. Sess., LB1, § 14; Laws 2015, LB629, § 1.

**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.  
**Major Oil Pipeline Siting Act**, see section 57-1401.  
**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.

The Public Service Commission does not have jurisdiction pursuant to the Grain Warehouse Act and the Grain Dealer Act to determine equitable actions based on fraud and misrepresent-

ation, such as rescission or an action for a constructive trust. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

**75-110 Rules and regulations.**

(1) The Public Service Commission shall adopt and promulgate rules and regulations for the government of its proceedings, including rules of procedure for notice and hearing. The commission shall adopt and promulgate rules and regulations which the commission deems necessary to regulate persons within the commission’s jurisdiction. The commission shall not take any action affecting persons subject to the commission’s jurisdiction unless such action is taken pursuant to a rule, regulation, or statute.

(2) For purposes of granting or denying a petition for intervention, the commission shall be exempt from section 84-912.02.

**Source:** Laws 1963, c. 425, art. I, § 10, p. 1357; Laws 1967, c. 479, § 1, p. 1475; Laws 1993, LB 413, § 2; Laws 1994, LB 414, § 32; Laws 1996, LB 1218, § 37; Laws 2017, LB263, § 80.

**Cross References**

**For other provisions for adopting rules and regulations**, see Chapter 84, article 9.

This section does not require the Public Service Commission to engage in rulemaking when defining terms in a federal statute unless the Public Service Commission first considers that such action is necessary. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

This section requires the Public Service Commission to promulgate rules only for the government of its proceedings, including rules of procedure for notice and hearing and rules which the commission considers necessary to regulate persons

within its jurisdiction. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

Commission had right to adopt rule prohibiting tacking of certain authorities and regulating tacking of other authorities. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

A rate order is not a rule. Ready Mix, Inc. v. Nebraska Railroads, 181 Neb. 697, 150 N.W.2d 275 (1967).

**75-110.01 Application or petition for authority or relief; procedures.**

A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt.

After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier, pipeline carrier, or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant's affidavits and made them a part of the record.

**Source:** Laws 1967, c. 479, § 2, p. 1476; Laws 2003, LB 790, § 64; Laws 2011, First Spec. Sess., LB1, § 15.

Railway Commission is required to hold a hearing on an application on a petition unless it is not opposed and its disposition is made by use of affidavits. *Allen v. Omaha Transit Co., Inc.*, 187 Neb. 156, 187 N.W.2d 760 (1971).

**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.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

**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, contract, or pipeline 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; Laws 2011, First Spec. Sess., LB1, § 16.

**75-113 Records; prescribe; inspection.**

The commission may prescribe the forms of any and all accounts and records to be kept by a regulated motor carrier as defined in section 75-302 or common

carriers subject to its jurisdiction, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money. The commission shall not prohibit any such carrier from capitalizing on its balance sheet the value of any certificate or permit held by such carrier. The commission shall at all times have access to all accounts, records, and memoranda kept by such carriers, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, except as provided in this section.

**Source:** Laws 1963, c. 425, art. I, § 13, p. 1358; Laws 1989, LB 78, § 3; Laws 1994, LB 414, § 34; Laws 1995, LB 424, § 5.

**75-114 Records; refusal to permit examination; penalty.**

Any motor carrier or regulated motor carrier as defined in section 75-302, any common carrier, or any other person who has in his or her possession any book, paper, document, or record belonging to any carrier subject to the jurisdiction of the commission and who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such carrier or any officer, agent, or employee thereof, shall be guilty of a Class III misdemeanor. Any officer, agent, or employee of any carrier or any other person who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such person, shall be guilty of a Class III misdemeanor for each offense.

**Source:** Laws 1963, c. 425, art. I, § 14, p. 1358; Laws 1989, LB 78, § 4; Laws 1995, LB 424, § 6; Laws 1996, LB 1218, § 38.

**75-115 Examinations and inspections; authorized; duty and power to repair; notice; injunctions; carrier enforcement division; powers.**

(1) The commission shall have the power to examine and inspect, from time to time, the condition of each motor carrier or regulated motor carrier as defined in section 75-302 or each common carrier, the carrier's equipment, and the manner of the carrier's conduct and management, with regard to the public safety and convenience in the state.

(2) If any equipment is found in an unsafe and dangerous condition, the commission shall immediately notify such carrier whose duty it is to put the same in repair, which shall be done by it within a reasonable time after receiving such notice. If any such carrier fails to perform this duty, the commission may enjoin and prevent it from operating the same while in such unsafe and dangerous condition or may after notice and hearing order such carrier to make reasonable improvements of its service, facilities, and equipment as are necessary.

(3) It is the policy of the Legislature that the on-road enforcement of the provisions of law related to regulated motor carriers and motor carriers administered by the commission shall be carried out by the carrier enforcement division of the Nebraska State Patrol.

**Source:** Laws 1963, c. 425, art. I, § 15, p. 1359; Laws 1971, LB 662, § 1; Laws 1989, LB 78, § 5; Laws 1995, LB 424, § 7; Laws 1996, LB 1218, § 39.



Even before 1971 amendment, Railway Commission's powers were not limited to injunction as means of enforcement; power specifically confirmed by 1971 amendment. Nebraska State Railway Commission v. Chicago & N.W. Ry. Co., 187 Neb. 369, 191 N.W.2d 438 (1971).

**75-116 Annual report; filing requirements; fee.**

Each regulated motor carrier as defined in section 75-302 or common carrier required to furnish an annual report with a federal regulatory agency shall file a copy of the report with the commission on or before the date on which such report is filed with such agency. Each such carrier not required to file an annual report with a federal regulatory agency may be required to file an annual report with the commission in the form prescribed by the commission on or before April 30 of each year. Each carrier which files an annual report or a copy of an annual report under this section shall submit a fee of twenty-five dollars with the filing. The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

**Source:** Laws 1963, c. 425, art. I, § 16, p. 1359; Laws 1965, c. 447, § 1, p. 1419; Laws 1989, LB 78, § 6; Laws 1994, LB 414, § 35; Laws 1995, LB 424, § 8; Laws 1996, LB 1218, § 40; Laws 2003, LB 187, § 14.

A failure through oversight to file an annual report required by this section would not justify a revocation of authority. Nebraska Public Service Commission v. Grand Island Moving & Storage Co., Inc., 203 Neb. 356, 278 N.W.2d 762 (1979).

**75-117 Order of commission; failure to comply; penalty.**

Any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses to comply with any order of the commission shall be guilty of a Class IV misdemeanor. Each day during which such failure, neglect, or refusal continues shall constitute a separate offense. If a motion is filed for reconsideration or to set aside the order, the carrier shall not be subject to such penalty during the pendency of such motion.

**Source:** Laws 1963, c. 425, art. I, § 17, p. 1360; Laws 1989, LB 78, § 7; Laws 1995, LB 424, § 9; Laws 2002, LB 1105, § 484; Laws 2003, LB 187, § 15.

**75-118 Commission; duties.**

The commission shall:

- (1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;
- (2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;
- (3) Prevent and correct the unjust discriminations set forth in section 75-126;
- (4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the Major Oil Pipeline Siting Act and the State Natural Gas Regulation Act.

**Source:** Laws 1963, c. 425, art. I, § 18, p. 1360; Laws 1989, LB 78, § 8; Laws 1994, LB 414, § 36; Laws 1995, LB 424, § 10; Laws 2003, LB 790, § 66; Laws 2011, First Spec. Sess., LB1, § 17.

**Cross References**

**Major Oil Pipeline Siting Act**, see section 57-1401.  
**State Natural Gas Regulation Act**, see section 66-1801.

Evidence of the existing rates for services as established by the Interstate Commerce Commission constitutes prima facie evidence of the reasonableness of the rates for the same services when performed in intrastate commerce in this state. *Nebraska Railroads of Omaha v. Nebco, Inc.*, 194 Neb. 322, 231 N.W.2d 505 (1975).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. *Live-*

*stock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn.*, 191 Neb. 1, 213 N.W.2d 443 (1973).

This section referred to in decision to the effect that the State Railway Commission is empowered to fix joint line rates. *Howard McLean Co. v. Chicago, B. & Q. R.R. Co.*, 187 Neb. 30, 187 N.W.2d 300 (1971).

Railway Commission has a duty to prescribe necessary rates and classification of freight. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

**75-118.01 Certificate, permit, tariff, rule, or regulation; interpretation; jurisdiction.**

Except as otherwise provided in the Administrative Procedure Act, the commission shall have original exclusive jurisdiction to determine the validity of a rule or regulation and the scope or meaning of a certificate, permit, tariff, rule, or regulation. Upon petition or complaint by any common carrier or other interested person to determine the validity, scope, or meaning of a certificate, permit, tariff, rule, or regulation, the commission shall cause notice thereof to be given according to its rules and shall proceed to hear evidence and argument on the petition or complaint. After notice and hearing, the commission shall by order render its decision.

**Source:** Laws 1967, c. 479, § 3, p. 1476.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

Section 75-136 authorizes appellate courts to review an order of the Public Service Commission interpreting a rule or regulation pursuant to the commission's authority under this section. In re Proposed Amend. to Title 291, 264 Neb. 298, 646 N.W.2d 650 (2002).

This section gives the Nebraska Public Service Commission original exclusive jurisdiction to determine the scope or mean-

ing of a certificate. In re *Petition of G. Kay, Inc.*, 219 Neb. 24, 361 N.W.2d 182 (1985).

Commission had original exclusive jurisdiction to determine scope and meaning of rule relating to tacking of authorities. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

**75-119 Rate, rule, or regulation; petition to prescribe or fix; procedure.**

When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed when none exists or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

**Source:** Laws 1963, c. 425, art. I, § 19, p. 1361; Laws 1967, c. 479, § 4, p. 1476; Laws 1994, LB 414, § 37.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

The State Railway Commission is without authority to fix or change a schedule and classification of rates without notice and hearing. *Chicago, B. & Q. R.R. Co. v. Nebraska State Railway Commission*, 180 Neb. 587, 144 N.W.2d 432 (1966).

Common carriers are entitled to be heard in rate case. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

**75-120 Repealed. Laws 1967, c. 479, § 22.**

**75-121 Emergency rate orders; when authorized.**

To prevent interstate rate wars and injury to any common carrier or other person or in case of any other emergency to be judged by the commission, the commission shall temporarily alter, amend, or suspend any existing rates in force in respect to any common carrier or fix any such rates if none exist. The order prescribing an emergency rate shall describe the emergency and may be entered and made effective immediately. Within five days after the effective date of such order, notice of the rate shall be given to the common carriers affected in accordance with the commission's rules for notice. If an affected common carrier or other interested person files a protest to the granting of such rate within fifteen days after notice has been given, the commission shall notify the rate applicant and the protestant, hold a hearing, and issue an order within thirty days after the expiration of the time to file a protest. Emergency rate orders shall be subject to the provisions of section 75-139 and subject to review as provided in section 75-136.

**Source:** Laws 1963, c. 425, art. I, § 21, p. 1362; Laws 1967, c. 479, § 5, p. 1477; Laws 1991, LB 732, § 129; Laws 1994, LB 414, § 38; Laws 2003, LB 187, § 16.

**75-122 Repealed. Laws 1967, c. 479, § 22.**

**75-122.01 Transferred to section 75-134.01.**

**75-122.02 Repealed. Laws 1982, LB 592, § 2.**

**75-123 Rates; hearing; criteria.**

The following criteria shall be among those considered by the commission in fixing, modifying, or annulling any rate:

(1) The lowest rates published or charged by any common carrier for substantially the same kind of service, whether in this state or another state, shall, when introduced into evidence, be accepted as prima facie evidence of a reasonable rate for the services inquired into; and

(2) If any common carrier involved in the proceedings operates outside of this state, the rate charged for substantially the same or greater service by it in the other state shall be considered in determining what is a reasonable rate.

**Source:** Laws 1963, c. 425, art. I, § 23, p. 1362; Laws 1994, LB 414, § 39.

Evidence of the existing rates for services as established by the Interstate Commerce Commission constitutes prima facie evidence of the reasonableness of the rates for the same services when performed in intrastate commerce in this state. *Nebraska Railroads of Omaha v. Nebco, Inc.*, 194 Neb. 322, 231 N.W.2d 505 (1975).

lowest rate published or charged will be prima facie evidence of a reasonable rate for the service under investigation. *Howard McLean Co. v. Chicago, B. & Q. R.R. Co.*, 187 Neb. 30, 187 N.W.2d 300 (1971).

Prima facie evidence of reasonable rates may consist of the lowest rates published by any common carrier for the same kind of service. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

Where there is a differential in rates between shipping points and the circumstances appear to be substantially similar, the

**75-124 Rates; publication.**

The commission may compile and reproduce tariffs containing the schedules of rates and charges for transportation of persons and property and may make a charge for copies of such tariffs to cover the cost of reproducing, supplementing, and mailing the same. Every common carrier shall reproduce, keep for public inspection, and file with the commission in the manner prescribed by the commission, schedules showing the rates, fares, and charges for the transportation of passengers and household goods which have been fixed and established as provided in Chapter 75, articles 1 and 3, and which are in force at the time with respect to such common carrier.

**Source:** Laws 1963, c. 425, art. I, § 24, p. 1363; Laws 1995, LB 424, § 11.

**75-125 Rate schedule; failure to publish; mandamus.**

Any common carrier which fails, refuses, or neglects to file or publish any schedule of rates, fares, and charges, or any part of the same, shall, in addition to other penalties prescribed in sections 75-101 to 75-155, be subject to a writ of mandamus to be issued by any district court of this state in the judicial district in which its principal office is situated or in which the offense may be committed. If the common carrier is a foreign corporation, then the writ may be issued by any district court in the judicial district where it accepts traffic and has an agent to perform such service to compel compliance with the provisions of section 75-124. The writ shall issue in the name of the state on the relation or upon the petition of the commission, and the failure to comply with the requirements shall be punishable as for contempt and shall make such common carrier liable to a penalty of one thousand dollars for each day's failure to comply with the writ. Whenever any such writ of mandamus is applied for, no bond shall be required.

**Source:** Laws 1963, c. 425, art. I, § 25, p. 1363; Laws 1994, LB 414, § 40.

**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.

The Nebraska Public Service Commission cannot require that switching charges be absorbed retroactively when the approved rate schedule for such switching did not require absorption. In re Formal Complaint of Nebco, Inc., 212 Neb. 804, 326 N.W.2d 167 (1982).

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. Myers v. Blair Tel. Co., 194 Neb. 55, 230 N.W.2d 190 (1975).

Railway Commission given quasi-judicial power hereunder to examine facts, determine questions of law, and determine issue of unjust discrimination in fares charged by common carriers. Allen v. Omaha Transit Co. Inc., 187 Neb. 156, 187 N.W.2d 760 (1971).

There being substantial evidence in the record to sustain the State Railway Commission's finding of discrimination, its order fixing the joint line rates it did, appears to be reasonable and not arbitrarily made. Howard McLean Co. v. Chicago, B. & Q. R.R. Co., 187 Neb. 30, 187 N.W.2d 300 (1971).

**75-127 Unjust discrimination and practices; violations; penalties.**

Any common carrier, shipper, or consignee who willfully violates any provision of section 75-126 shall be guilty of a Class I misdemeanor. Any officer, agent, or employee who, for or on behalf of any common carrier, shipper, or consignee, willfully violates any provision of section 75-126 shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

**Source:** Laws 1963, c. 425, art. I, § 27, p. 1365; Laws 1971, LB 843, § 1; Laws 1977, LB 39, § 198; Laws 1994, LB 414, § 42.

**75-128 Hearings; when held; filing fee.**

(1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in the Major Oil Pipeline Siting Act or section 75-121 and except for good cause shown, a decision of the commission shall be

made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-303.01 to 75-303.03, the Major Oil Pipeline Siting Act, or the State Natural Gas Regulation Act, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing. The commission shall also charge to persons regulated by the commission, except persons regulated under the Major Oil Pipeline Siting Act or the State Natural Gas Regulation Act, a hearing fee to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

**Source:** Laws 1963, c. 425, art. I, § 28, p. 1365; Laws 1967, c. 479, § 8, p. 1479; Laws 1969, c. 604, § 1, p. 2464; Laws 1971, LB 24, § 1; Laws 1971, LB 839, § 1; Laws 1972, LB 1068, § 1; Laws 1982, LB 928, § 56; Laws 1982, LB 633, § 2; Laws 1985, LB 384, § 1; Laws 1989, LB 78, § 9; Laws 1993, LB 412, § 1; Laws 1994, LB 414, § 43; Laws 1994, LB 872, § 17; Laws 1995, LB 424, § 13; Laws 2002, LB 1105, § 487; Laws 2003, LB 187, § 17; Laws 2003, LB 790, § 68; Laws 2011, First Spec. Sess., LB1, § 18; Laws 2017, LB263, § 81.

#### Cross References

**Major Oil Pipeline Siting Act**, see section 57-1401.

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

On any matter heard by an examiner, a decision should be filed within thirty days after oral argument before the commission. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

#### 75-129 Sessions and hearings; when and where held.

The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the Major Oil Pipeline Siting Act, in the State Natural Gas Regulation Act, or under any other law of this state at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission. The commission may hold public meetings as provided in section 57-1407.

**Source:** Laws 1963, c. 425, art. I, § 29, p. 1366; Laws 2003, LB 790, § 69; Laws 2011, First Spec. Sess., LB1, § 19.

## Cross References

Major Oil Pipeline Siting Act, see section 57-1401.  
 State Natural Gas Regulation Act, see section 66-1801.

**75-130 Witnesses; failure to testify or comply with subpoena; penalty; depositions; witness and other fees.**

In case any witness shall fail or refuse to obey any subpoena issued by the commission, or to produce before the commission such books, papers, documents or records as shall have been enumerated and required in any subpoena, or shall fail or refuse, when before the commission, to give testimony lawfully required by it, or fail or refuse to answer such questions as may be propounded by it which such witness would be required to answer if in court, he shall be guilty of a misdemeanor, and upon conviction thereof, for each offense, shall be fined in any sum not exceeding five thousand dollars. The claim that any such testimony may tend to incriminate the witness shall not excuse the witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. Testimony may be taken by deposition as in suits at law. Witness fees shall be paid as provided by law in attendance at any district court in this state. The sheriff or constable executing any process of the commission shall receive such compensation as is provided by law for performing similar services.

**Source:** Laws 1963, c. 425, art. I, § 30, p. 1366.

**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.

## Cross References

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

**75-131 Common or contract carriers; jurisdictional utility; complaint of violation; service; other proceedings.**

Any person who complains of anything done or omitted to be done by any common or contract carrier or jurisdictional utility may request that the commission investigate and impose sanctions on such carrier or jurisdictional utility by filing a petition which briefly states the facts constituting the complaint. Notice of the complaint shall be served upon the respondent carrier or utility as in civil cases in district court, and the respondent shall be required to answer or satisfy the complaint within a reasonable time fixed by the commission. This section shall not prevent any person from proceeding against any

common or contract carrier or utility under the laws of this state for such cases made and provided.

**Source:** Laws 1963, c. 425, art. I, § 31, p. 1366; Laws 1994, LB 414, § 44; Laws 2003, LB 790, § 70.

**75-132 Complaint; hearing; notice; order.**

If a carrier or jurisdictional utility does not satisfy a complaint filed pursuant to section 75-131 within the time allowed and there appears to be a reasonable ground for investigation of the complaint upon its merits, the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing. After the hearing, the commission shall make such order with respect to the complaint as it deems just and reasonable. Such order must be consistent with the statutory authority that formed the basis for the complaint.

**Source:** Laws 1963, c. 425, art. I, § 32, p. 1367; Laws 1994, LB 414, § 45; Laws 2003, LB 790, § 71.

**75-132.01 Exclusive original jurisdiction; appeal.**

(1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) 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, or the Telephone Consumer Slamming Prevention Act by any person providing telecommunications service for a fee in Nebraska intrastate commerce pursuant to such acts or (b) sections 86-574 to 86-578 by an agency or political subdivision of the state.

(2) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such acts or sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents or the agency or political subdivision of the state from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

**Source:** Laws 2000, LB 1285, § 6; Laws 2001, LB 827, § 18; Laws 2002, LB 1105, § 488; Laws 2003, LB 187, § 18.

**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.  
**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.  
**Telecommunications Relay System Act**, see section 86-301.  
**Telephone Consumer Slamming Prevention Act**, see section 86-201.

**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.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

**75-134 Commission order; requirements; when effective; rate order under State Natural Gas Regulation Act; appeal; stay enforcement.**

(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 an alternate 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 by the commission or the Court of Appeals.

(4) Notwithstanding subsection (3) of this section, any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall stay enforcement of such order pending resolution of the appeal.

**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; Laws 2013, LB545, § 4.

**Cross References**

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

The “reasoning” requirement of this section is satisfied by a Public Service Commission order containing a statement of underlying facts, ultimate facts, and findings where the issues involved are issues of fact. *Hugelman v. A & A Trucking, Inc.*, 198 Neb. 628, 254 N.W.2d 412 (1977).

The filing of a motion for rehearing before the Public Service Commission is the commencement of an appeal proceeding, and where followed by overruling of the motion and filing of notice of appeal and appeal to Supreme Court the rate order is put in abeyance until a supersedeas bond is filed. *Chicago & North-*

western Transp. Co. v. Nebco, Inc., 196 Neb. 490, 243 N.W.2d 779 (1976).

An order of Railway Commission which fails to make findings of ultimate facts will be set aside on appeal. Andrews Van Lines, Inc. v. Smith, 187 Neb. 533, 192 N.W.2d 406 (1971).

#### **75-134.01 Order; enjoin, when.**

Except as otherwise provided in sections 75-132.01, 75-134, 75-144, and 75-1012 and the State Natural Gas Regulation Act, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered (1) in accordance with Chapter 75 or 86 and the commission's rules and regulations adopted and promulgated pursuant to such chapters or (2) in accordance with other statutory authority underlying the commission's order.

**Source:** Laws 1967, c. 479, § 6, p. 1477; Laws 2000, LB 1285, § 2; Laws 2002, LB 1105, § 485; R.S.Supp.,2002, § 75-122.01; Laws 2003, LB 187, § 20; Laws 2003, LB 790, § 67.

#### **Cross References**

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

#### **75-134.02 Motion for reconsideration.**

(1) Except with respect to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838, any party may file a motion for reconsideration with the commission within ten days after the effective date of the order as determined under section 75-134. The filing of a motion for reconsideration shall suspend the time for filing a notice of intention to appeal pending resolution of the motion, except that if the commission does not dispose of a motion for reconsideration within sixty days after the filing of the motion, the motion shall be deemed denied and the procedures for appeal in section 75-136 apply.

(2) Any party to a general rate proceeding under the State Natural Gas Regulation Act may file a motion for reconsideration within thirty days after the day an order setting natural gas rates is entered by the commission. The filing of a motion for reconsideration shall stay the order until the earlier of the date the commission enters an order resolving the motion or one hundred twenty days from the date of the order setting rates. Either party shall have thirty days after the date the commission enters an order resolving the motion or the expiration of the one-hundred-twenty-day period for considering the motion, whichever is earlier, in which to file an appeal.

**Source:** Laws 2013, LB545, § 7.

#### **Cross References**

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

#### **75-135 Commission order; authentication.**

When certified to be a true and correct copy of the original by the executive director of the commission or a commissioner, a commission order shall be admitted in evidence in all courts and tribunals of this state, without further proof, as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

**Source:** Laws 1963, c. 425, art. I, § 35, p. 1368; Laws 1967, c. 479, § 10, p. 1480; Laws 1994, LB 414, § 48.

**75-136 Orders; right to appeal; manner and time; advancement of appeal of rate order under State Natural Gas Regulation Act.**

(1) Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the commission, such party may appeal.

(2) Any appeal filed on or after October 1, 2013, shall be taken in the same manner and time as appeals from the district court, except that the appellate court shall conduct a review of the matter de novo on the record. Appeals shall be heard and disposed of in the appellate court in the manner provided by law. Appeal of a commission order shall be perfected by filing a notice of intention to appeal with the executive director of the commission within thirty days after the effective date of the order as determined under section 75-134.

(3) Any appeal filed prior to October 1, 2013, shall be in accordance with sections 75-134, 75-136, and 75-156 as such sections existed prior to the changes made by Laws 2013, LB545.

(4) Any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall be advanced by the Court of Appeals as other causes which involve the public welfare and convenience are advanced.

**Source:** Laws 1963, c. 425, art. I, § 36, p. 1368; Laws 1967, c. 479, § 11, p. 1480; Laws 1989, LB 78, § 10; Laws 1991, LB 732, § 131; Laws 1992, LB 360, § 32; Laws 1995, LB 424, § 16; Laws 2000, LB 1285, § 4; Laws 2003, LB 187, § 21; Laws 2013, LB545, § 5.

**Cross References**

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

Under this section, an appellate court must reappraise the evidence on the record as it relates to the penalty issued by the Public Service Commission and reach an independent conclusion. *Telrite Corp. v. Nebraska Pub. Serv. Comm.*, 288 Neb. 866, 852 N.W.2d 910 (2014).

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. *Chase 3000, Inc. v. Nebraska Pub. Serv. Comm.*, 273 Neb. 133, 728 N.W.2d 560 (2007).

The primary effect of this section is that operative August 31, 2003, all appeals from the Public Service Commission, not just telecommunications cases, generally are to be brought under the Administrative Procedure Act; it does not evince a legislative intent to confer jurisdiction over telecommunications appeals that were not perfected under the statutory requirements in effect at the time the notice of appeal was filed. *Cox Nebraska Telecom v. Qwest Corp.*, 268 Neb. 676, 687 N.W.2d 188 (2004).

This section authorizes appellate courts to review an order of the Public Service Commission interpreting a rule or regulation pursuant to the commission's authority under section 75-118.01. In re Proposed Amend. to Title 291, 264 Neb. 298, 646 N.W.2d 650 (2002).

The appropriate standard of review for appeals from the Nebraska Public Service Commission is a review for errors appearing on the record. *Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist.*, 256 Neb. 479, 590 N.W.2d 840 (1999).

In an appeal to the Supreme Court from an order of the Nebraska Public Service Commission, the only questions to be determined are whether the PSC acted within the scope of its authority and whether the order complained of is reasonable and not arbitrary. In re Application of Kiltbau, 236 Neb. 811, 464 N.W.2d 162 (1991).

A party is precluded from objecting to the order of the Public Service Commission if he fails to act in accordance with the time limits prescribed in the statutes governing the procedure to obtain a reversal, modification, or vacation of the order. *Nebraska Public Power Dist. v. Huebner*, 202 Neb. 587, 276 N.W.2d 228 (1979).

An order of the Public Service Commission granting authority to the public power district to construct a transmission line becomes final thirty days after the mailing of a copy of the order, and it may not be revoked after that time. *Nebraska Public Power Dist. v. Huebner*, 202 Neb. 587, 276 N.W.2d 228 (1979).

**75-136.01 Repealed. Laws 2003, LB 187, § 37.**

**75-137 Repealed. Laws 2003, LB 187, § 37.**

**75-138 Repealed. Laws 2003, LB 187, § 37.**

**75-139 Rate order; appeal; when effective; supersedeas bond; effect; applicability of section.**

(1) Except as otherwise provided in this section, the effective date of a rate order that is appealed shall be the first Monday following the date of the

appellate court's mandate if the order is affirmed, except that (a) a shipper may make effective a rate order reducing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate appealed and the original rate to the carrier entitled thereto if the order appealed is reversed and (b) a common carrier may make effective a rate order increasing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate finally approved and the rate appealed to shippers or subscribers entitled thereto if the order appealed is reversed.

(2) A supersedeas bond may be filed by any affected shipper or common carrier, including shippers or common carriers that were not parties to the rate proceeding, at any time prior to the issuance of the appellate court's mandate. Only the shipper or common carrier filing a supersedeas bond shall benefit from such filing.

(3) The commission shall approve a supersedeas bond which meets the requirements of this section within seven days after a written request therefor has been made, and failure to disapprove the bond within the time specified shall be deemed to be an approval.

(4) A carrier may put into effect rate increases granted by a commission order while appealing that portion of the commission's order denying a part of an application of the carrier.

(5) This section does not apply to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838.

**Source:** Laws 1963, c. 425, art. I, § 39, p. 1369; Laws 1967, c. 479, § 14, p. 1481; Laws 1976, LB 426, § 2; Laws 1991, LB 732, § 135; Laws 2013, LB545, § 6.

#### Cross References

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

The filing of a motion for rehearing before the Public Service Commission is the commencement of an appeal proceeding, and where followed by overruling of the motion and filing of notice of appeal and appeal to Supreme Court the rate order is put in

abeyance until a supersedeas bond is filed. *Chicago & Northwestern Transp. Co. v. Nebco, Inc.*, 196 Neb. 490, 243 N.W.2d 779 (1976).

#### **75-139.01 Person, defined.**

For purposes of sections 75-101 to 75-158, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity, including any common or contract carrier or jurisdictional utility and its owners, directors, officers, limited liability company members, agents, and employees.

**Source:** Laws 1993, LB 42, § 13; Laws 1994, LB 414, § 52; Laws 1994, LB 884, § 87; Laws 2000, LB 1285, § 8; Laws 2003, LB 790, § 72.

#### **75-140 Orders; enforcement; petition; notice.**

Whenever any person violates or disobeys an order issued by the commission which has been finally established, the commission or any person interested in such order may petition to the district court of Lancaster County alleging violation or disobedience thereof. The court may determine the matter on such

notice to the person complained of as the court deems reasonable. The notice may be served on such person as the court directs.

**Source:** Laws 1963, c. 425, art. I, § 40, p. 1369; Laws 1989, LB 78, § 12; Laws 1993, LB 42, § 12; Laws 1994, LB 414, § 53.

**75-141 Order; proceeding to enforce; duty of Attorney General.**

Whenever any petition authorized by section 75-140 is filed or is prosecuted by the commission or by its direction, the Attorney General shall prosecute the petition at the request of the commission, and the costs and expenses on the part of the commission of any such prosecution shall be paid out of the appropriations for the expenses of the commission.

**Source:** Laws 1963, c. 425, art. I, § 41, p. 1370; Laws 1993, LB 42, § 14; Laws 1994, LB 414, § 54.

**75-142 Order; enforcement; procedure.**

The court shall proceed to determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity but in such manner as to do justice in the premises. To this end, the court may direct and prosecute, in such manner and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

**Source:** Laws 1963, c. 425, art. I, § 42, p. 1370; Laws 1994, LB 414, § 55.

**75-143 Order; appeal; effect; attorney's fees.**

The commission and any person interested in the court's decision may appeal to the Court of Appeals under the rules provided by law as to security for an appeal to the Court of Appeals, except that in no case shall security for an appeal be required when the appeal is taken by the commission. An appeal to the Court of Appeals shall not operate to stay or supersede the order of the court or the issuance of execution thereon, and the court may in every such matter order the payment of such costs and attorney's fees as it deems reasonable.

**Source:** Laws 1963, c. 425, art. I, § 43, p. 1370; Laws 1991, LB 732, § 136; Laws 1994, LB 414, § 56.

**75-144 Order; violation; injunction; penalty.**

(1) If it appears to the court after a hearing that an order of the commission has been violated or disobeyed, the court may issue an injunction or other proper process, mandatory or otherwise, to restrain the person from further continuing such violation or disobedience of the order and enjoining disobedience to the order.

(2) In case of any disobedience of any injunction or other proper process, mandatory or otherwise, the person to whom it was directed shall be guilty of contempt of court. The court may issue a writ of attachment or other process of the court incident or applicable to an injunction or other proper process, mandatory or otherwise, against the person to pay any sum of money, not exceeding, for each such person, the sum of one thousand dollars for every day after a day to be named in the order that the person fails to obey the injunction or other proper process, mandatory or otherwise.

(3) The money shall, when paid, be disposed of according to law. The payment of the money may, without prejudice to any other motive covering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the money had been recovered by final decree in personam in such court.

**Source:** Laws 1963, c. 425, art. I, § 44, p. 1370; Laws 1993, LB 42, § 15; Laws 1994, LB 414, § 57.

**75-145 Repealed. Laws 2000, LB 1285, § 26.**

**75-146 Common carrier other than a railroad; consolidation or increase in stock; jurisdiction of commission.**

The capital stock of any common carrier other than a railroad shall not be increased for any purpose except after public notice for sixty days. No common carrier other than a railroad shall consolidate its stock, property, franchise, or earnings, in whole or in part, with any other competing common carrier without permission of the commission, and in no case shall any consolidation take place except on public notice of at least thirty days to all stockholders as provided in the rules of the commission.

**Source:** Laws 1963, c. 425, art. I, § 46, p. 1371; Laws 1994, LB 414, § 59.

**75-147 Repealed. Laws 1994, LB 414, § 137.**

**75-148 Common carrier; issuance of securities; conditions.**

A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement or maintenance of its service, or the discharge or lawful refunding of its obligations if the common carrier first secures from the commission an order authorizing such issue and the amount thereof and stating that in the opinion of the commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for the purposes of the carrier. A common carrier may issue notes or other evidence of indebtedness for proper corporate purposes and not in violation of any provision of law, payable in periods of not more than twelve months, without such consent if no such note is, in whole or in part, directly or indirectly, refunded by any issue of such stock or bonds, or by any evidence of indebtedness running more than twelve months, without the consent of the commission. The provisions of this section shall not apply to the security issuances of common carriers who are under the control of a federal regulatory agency.

**Source:** Laws 1963, c. 425, art. I, § 48, p. 1372; Laws 1994, LB 414, § 60.

**75-149 Consolidation; securities; issuance; limitation.**

The capital stock of a corporation formed by the merger or consolidation of two or more other corporations, shall not exceed the sum of the capital stock of the corporations so merged or consolidated at par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract, or consolidation or lease be capitalized in the stock of any corporation whatsoever.

er; nor after October 19, 1963, shall any corporation issue any bonds against or as a lien upon any contract for consolidation or merger.

**Source:** Laws 1963, c. 425, art. I, § 49, p. 1373.

**75-150 Securities; issuance; fees; expenses.**

No order authorizing the issuance of securities shall become operative until the applicant pays to the commission fees as follows: Upon applications totaling not more than twenty-five thousand dollars, the fee shall be twenty-five dollars; and upon applications totaling more than twenty-five thousand dollars, the fee shall be twenty-five dollars for the first twenty-five thousand dollars, one dollar per one thousand dollars for the next seventy-five thousand dollars, and twenty-five cents per one thousand dollars for all amounts in excess of one hundred thousand dollars, except that the total fee shall in no case exceed the sum of two thousand five hundred dollars. The fee shall be computed on the par value principal amount of the stock, or in the case of no par stock, on the declared or offering price, whichever is greater. The commission shall remit the fees received to the State Treasurer for credit to the General Fund. The actual and necessary expenses of the commission incurred in investigating the application to sell securities shall be paid by the applicant, who may be required by the commission to deposit in advance a sum sufficient therefor. Any balance thereof shall be returned to the applicant.

**Source:** Laws 1963, c. 425, art. I, § 50, p. 1373; Laws 1969, c. 605, § 1, p. 2466; Laws 1982, LB 928, § 57; Laws 1994, LB 414, § 61.

**75-151 Securities; violation; penalty.**

Any common carrier which violates any of the provisions of sections 75-146 to 75-150 or which fails, omits, or neglects to obey, observe, or comply with any order, direction, or requirement of the commission under the provisions of such sections shall forfeit to the State of Nebraska a sum not to exceed five thousand dollars for each and every offense. Each violation of any such order or direction or requirement of such sections shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense. Each officer and agent of any common carrier who violates or procures, aids, or abets any violation by any such common carrier of any of the provisions of sections 75-146 to 75-150, who fails to obey, observe, and comply with any order of the commission or any provision of an order of the commission under the terms of such sections, or who procures, aids, or abets any such common carrier in its failure to obey, observe, and comply with any such order or provision shall be guilty of a Class III felony.

**Source:** Laws 1963, c. 425, art. I, § 51, p. 1373; Laws 1977, LB 39, § 199; Laws 1994, LB 414, § 62.

**75-152 Common carriers; consignor; designation of means and routing of shipment.**

When transportation is involved in connection with the sale of personal property and the price at which such personal property is sold is a delivered price at destination, the consignor may determine the means of transportation to be used and the routing of the shipment.

**Source:** Laws 1965, c. 444, § 1, p. 1413; Laws 1994, LB 414, § 63.

**75-153 Common carriers; consignee; designation of means and routing of shipment; exception.**

Where transportation is involved in the sale of personal property and the price at which such property is sold is determined f.o.b. shipping point, the consignee may determine the means of transportation to be used and the routing of the shipment, except that if the consignor has not received written shipping instructions from the consignee designating a specific carrier a reasonable time prior to the making of the shipment, the consignor may determine the means of transportation to be used and the routing of the shipment.

**Source:** Laws 1965, c. 444, § 2, p. 1413; Laws 1994, LB 414, § 64.

**75-154 Common carriers; consignor; violation of shipping instructions; damages.**

If, under section 75-153, a consignor of personal property violates written shipping instructions given by the consignee to the consignor a reasonable time prior to the making of the shipment, the consignor shall be liable for actual damages to the consignee or any public carrier injured by the failure of the consignor to comply with the written shipping instructions given the consignor by the consignee.

**Source:** Laws 1965, c. 444, § 3, p. 1413; Laws 1994, LB 414, § 65.

**75-155 Violations; general penalty.**

Unless a more specific criminal penalty is provided, any person who knowingly and willfully violates Chapter 75 or 86, any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission is guilty of a Class IV misdemeanor. Each day of such violation constitutes a separate offense.

**Source:** Laws 1965, c. 446, § 2, p. 1416; Laws 1977, LB 39, § 200; Laws 1989, LB 78, § 13; Laws 1994, LB 414, § 66; Laws 2002, LB 1105, § 492.

**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 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 section 75-136.

(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; Laws 2013, LB545, § 8.

**Cross References**

**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.

**75-157 Hearing; order; requirements.**

Any hearing held pursuant to section 75-156 shall be held pursuant to rules and regulations adopted and promulgated by the Public Service Commission. Every decision and order rendered by the commission after the hearing is held shall be in writing and accompanied by findings of facts and conclusions of law. The decision or order shall be sent to the parties by certified or registered mail.

**Source:** Laws 1995, LB 424, § 19.

**75-158 Unpaid civil penalty; how treated.**

A civil penalty assessed pursuant to section 75-156 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of Lancaster County. Any civil penalty collected shall be transmitted within thirty days from receipt to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1995, LB 424, § 20.

**75-159 Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment.**

(1) The Public Service Commission Housing and Recreational Vehicle Cash Fund is created. The fund shall consist of fees collected under the Nebraska Uniform Standards for Modular Housing Units Act and fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(2) Money credited to the fund shall be used by the Public Service Commission for the purposes of administering the Nebraska Uniform Standards for Modular Housing Units Act and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(3) Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Public Service Commission Housing and Recreational Vehicle 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.

(4) On July 1, 2010, the State Treasurer shall transfer any money in the Modular Housing Units Cash Fund and any money in the Manufactured Homes and Recreational Vehicles Cash Fund to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

**Source:** Laws 2010, LB849, § 36.

#### Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

### **75-160 Wireless telecommunications service; registry for complaints regarding lack of appropriate coverage; use.**

(1) The Public Service Commission shall establish and maintain a registry of locations within the State of Nebraska for complaints made to the commission regarding the lack of appropriate coverage for wireless telecommunications service.

(2) The commission may utilize the information maintained in the registry only for making any determination related to the granting of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities.

(3) For purposes of this section, lack of appropriate coverage means a geographic area where a wireless device is not able to receive a signal from the wireless service provider's network whereby an individual is unable to use a wireless device.

(4) The commission shall adopt and promulgate any rules and regulations required to carry out this section.

**Source:** Laws 2018, LB994, § 5.

Operative date July 1, 2018.

## ARTICLE 2

### AIR CARRIERS

#### Section

75-201. Air carrier; exempt from commission regulation.

75-202. Repealed. Laws 1994, LB 414, § 137.

### **75-201 Air carrier; exempt from commission regulation.**

Any person who transports passengers or property for the public in intrastate commerce by any airborne vehicle shall not be a common carrier subject to commission regulation.

**Source:** Laws 1963, c. 425, art. II, § 1, p. 1374; Laws 1993, LB 121, § 463; Laws 1994, LB 414, § 67.

Intrastate air carrier regulations are preempted by federal regulations. *Pioneer Airways, Inc. v. City of Kearney*, 199 Neb. 12, 256 N.W.2d 324 (1977).

**75-202 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 3  
MOTOR CARRIERS**

(a) INTRASTATE MOTOR CARRIERS

Section

- 75-301. Motor carriers; regulation; legislative policy.
- 75-302. Terms, defined.
- 75-303. Motor carriers; scope of law.
- 75-303.01. Nonemergency medical transportation for medicaid clients; contracts authorized.
- 75-303.02. Contracts for transportation; requirements.
- 75-303.03. Reimbursement for transportation costs; conditions; exemption from commission regulation or commission rate regulation.
- 75-304. Classification of carriers; rules and regulations; contract carriers; insurance; applicability of rules and regulations.
- 75-304.01. Rates, fares, and charges; commission prescribe; when.
- 75-304.02. Mover of household goods; certificate or permit, when required.
- 75-305. Fees; amount; when due; disposition.
- 75-306. Receipt for fees; license plates and renewal tabs.
- 75-307. Insurance and bond requirements; subrogation; applicability of section.
- 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.
- 75-308. Tariff; publication; unlawful practices.
- 75-308.01. Operational conditions; meetings of motor carriers authorized; purposes; joint-line arrangements authorized; joint rates; how treated.
- 75-309. Certificate of public convenience and necessity or permit; required; exception.
- 75-309.01. Transportation of passengers for hire; operation without certificate; nuisance; penalty.
- 75-309.02. Repealed. Laws 1989, LB 78, § 37.
- 75-309.03. Repealed. Laws 1995, LB 424, § 54.
- 75-310. Application for certificate or permit; petition for relief; requirements.
- 75-311. Certificates; permits; designation of authority; issuance; review by commission; effect.
- 75-312. Repealed. Laws 1995, LB 424, § 54.
- 75-313. Certificate; permit; terms.
- 75-314. Deviation from route; special or charter parties.
- 75-315. Certificates; permits; effective date; revocation or suspension; grounds.
- 75-316. Suspension of service; approval of commission; voluntary revocation of certificate or permit.
- 75-317. Repealed. Laws 1995, LB 424, § 54.
- 75-318. Sale, transfer, lease, or consolidation; application; hearing; approval of commission required.
- 75-319. Sale, transfer, lease, or consolidation; temporary approval.
- 75-320. Sale or transfer of stock ownership; change in partnership or limited liability company; approval of commission; hearing.
- 75-321. Certificate; permit; death or incompetency of holder; transfer; approval of commission.
- 75-322. Certificate; permit; trustee, receiver, or assignee; continue operations; petition; order of commission.

(b) TRANSPORTATION NETWORK COMPANY

- 75-323. Terms, defined.

## MOTOR CARRIERS

- Section  
75-324. Operation of transportation network company; permit required; application; contents; commission; duties.  
75-325. Transportation network company; duties; driver; duties; complaints; commission; powers.  
75-326. Participating driver; requirements; criminal history record information check.  
75-327. Prearranged ride required; limit on hours; dynamic pricing; filing of rates; receipt; contents.  
75-328. Use of personal vehicle; requirements; initial safety inspection; annual inspection; reports available.  
75-329. Inspection of records; complaint; commission powers; treatment of records.  
75-330. Noncompete provision.  
75-331. Transportation Network Company Regulation Cash Fund; created; use; investment.  
75-332. Driver; disclosure by transportation network company; contents; acknowledgment; notice to lienholder; record.  
75-333. Transportation network company insurance; requirements.  
75-334. Transportation network company insurance during application open stage; requirements.  
75-335. Coverage of insurance; certificate of insurance; filing required.  
75-336. Liability; certain payments; how treated.  
75-337. Owner of personal vehicle; duty.  
75-338. Sections; how construed.  
75-339. Personal automobile insurer; policy, amendment, or endorsement; contents.  
75-340. Cooperation with insurers; maintenance of records.  
75-341. Participating driver; proof of insurance coverage.  
75-342. Certain services; specific authorization from commission required.  
75-343. Report; contents.

### (c) TRACTOR ENGINE TESTS

- 75-344. Transferred to section 2-2709.  
75-345. Transferred to section 2-2710.  
75-346. Transferred to section 2-2711.  
75-347. Transferred to section 2-2712.

### (d) INTERSTATE MOTOR CARRIERS

- 75-348. Repealed. Laws 2009, LB 331, § 28.  
75-349. Repealed. Laws 2009, LB 331, § 28.  
75-350. Repealed. Laws 2009, LB 331, § 28.  
75-351. Repealed. Laws 2009, LB 331, § 28.  
75-352. Repealed. Laws 2007, LB 358, § 19.  
75-353. Repealed. Laws 2009, LB 331, § 28.  
75-354. Repealed. Laws 2009, LB 331, § 28.  
75-355. Repealed. Laws 2009, LB 331, § 28.  
75-356. Repealed. Laws 1991, LB 337, § 12.  
75-357. Repealed. Laws 1991, LB 337, § 12.  
75-358. Repealed. Laws 2009, LB 331, § 28.

### (e) SAFETY REGULATIONS

- 75-359. Repealed. Laws 1987, LB 4, § 1.  
75-360. Repealed. Laws 1987, LB 4, § 1.  
75-361. Repealed. Laws 1987, LB 4, § 1.  
75-362. Federal regulations; terms, defined.  
75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.  
75-364. Additional federal motor carrier regulations; provisions adopted.  
75-365. Definitions; applicability; report; requirements.  
75-366. Enforcement powers.  
75-367. Violations; penalty.  
75-368. Nebraska State Patrol; carrier enforcement division; adopt rules and regulations; prior rules and regulations; effect.

**§ 75-301**

**PUBLIC SERVICE COMMISSION**

Section

- 75-369. Nebraska State Patrol; provide declaration of safety regulations; distribution; acknowledgment of applicant.
- 75-369.01. Nebraska State Patrol carrier enforcement division; safety audit or compliance review.
- 75-369.02. Safety rating; factors; notice.
- 75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when.
- 75-369.04. Civil penalty; order; contents; collection.
- 75-369.05. Notice or order; service.
- 75-369.06. Unpaid civil penalties; collection.
- 75-369.07. Summary order; hearing; procedure; final order; appeal.

(f) ENFORCEMENT

- 75-370. Insurance, bond, certificate, and permit requirements; enforcement; duties.
- 75-371. Insurance, bond, certificate, and permit requirements; violations; penalty.

(g) INTERSTATE OPERATING AUTHORITY AGREEMENT ACT

- 75-372. Repealed. Laws 1993, LB 413, § 9.
- 75-373. Repealed. Laws 1993, LB 413, § 9.
- 75-374. Repealed. Laws 1993, LB 413, § 9.
- 75-375. Repealed. Laws 1993, LB 413, § 9.
- 75-376. Repealed. Laws 1993, LB 413, § 9.
- 75-377. Repealed. Laws 1993, LB 413, § 9.
- 75-378. Repealed. Laws 1993, LB 413, § 9.
- 75-379. Repealed. Laws 1993, LB 413, § 9.
- 75-380. Repealed. Laws 1993, LB 413, § 9.

(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

- 75-385. Division of Motor Carrier Services; established; Administrator of Motor Carrier Services.
- 75-386. Division of Motor Carrier Services; duties.
- 75-387. Repealed. Laws 2002, LB 93, § 27.
- 75-388. Repealed. Laws 2002, LB 93, § 27.
- 75-389. Rules and regulations.
- 75-390. Repealed. Laws 2009, LB 331, § 28.

(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.
- 75-393. Unified carrier registration plan and agreement; director; powers.
- 75-394. Registration under unified carrier registration plan and agreement; fees; authorization to accept registration.
- 75-395. Repealed. Laws 2009, LB 331, § 28.
- 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

**75-301 Motor carriers; regulation; legislative policy.**

(1) It is the policy of the Legislature to comply with the laws of the United States, to promote uniformity of regulation, to prevent motor vehicle accidents,

deaths, and injuries, to protect the public safety, to reduce redundant regulation, to promote financial responsibility on the part of all motor carriers operating in and through the state, and to foster the development, coordination, and preservation of a safe, sound, adequate, and productive motor carrier system which is vital to the economy of the state.

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (c) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (d) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, (e) cooperate with the several states and the duly authorized officials thereof, and (f) cooperate with the United States Government in the administration and enforcement of the unified carrier registration plan and agreement.

The commission, the Division of Motor Carrier Services, and the carrier enforcement division shall enforce all provisions of section 75-126 and Chapter 75, article 3, so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

**Source:** Laws 1963, c. 425, art. III, § 1, p. 1374; Laws 1989, LB 78, § 14; Laws 1995, LB 424, § 21; Laws 1996, LB 1218, § 42; Laws 2009, LB331, § 14.

**1. Public interest factors**  
**2. Jurisdiction**  
**3. Miscellaneous**

**1. Public interest factors**

Denial of an application for authority to provide charter service in Nebraska because such a grant would endanger or impair operations of existing carriers, contrary to the public interest, found to be appropriate. In re Application of Crusader Coach Lines, 213 Neb. 53, 327 N.W.2d 98 (1982).

Where there is evidence to sustain the factors for and against the issuance of a permit to a contract carrier, required to be considered by the Nebraska State Railway Commission, the determination of the public interest is for the commission and not the courts. Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 188 Neb. 584, 198 N.W.2d 195 (1972).

Purpose of Nebraska Motor Carrier Act was not to stifle legitimate competition but to permit it where public convenience and necessity requires. Petroleum Transport Service, Inc. v. Wheeler Transport Service, Inc., 188 Neb. 400, 197 N.W.2d 8 (1972).

A permit which at best would merely allow one carrier to gain a competitive advantage over another in performing substantially the same service will not be granted. Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 186 Neb. 261, 182 N.W.2d 648 (1971).

Meaning of word necessary has been shaped by policy of act. Ready Mix, Inc. v. Nebraska Railroads, 181 Neb. 697, 150 N.W.2d 275 (1967).

**2. Jurisdiction**

The primary consideration of Public Service Commission control is benefit to the public rather than to the individual. Ruan Transp. Corp. v. Herman Bros., Inc., 192 Neb. 343, 220 N.W.2d 245 (1974); Herman Brothers, Inc. v. Hennis Freight Lines, Inc., 192 Neb. 258, 220 N.W.2d 230 (1974).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

**3. Miscellaneous**

A litigant may not request a certificate of public convenience and necessity and in the same action and at the same time challenge the constitutionality of sections 75-301 through 75-322. In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 578 N.W.2d 28 (1998).

Commission had right to adopt rule prohibiting tacking of certain authorities and regulating tacking of other authorities. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

Purpose of Nebraska Motor Carrier Act stated. Poulson v. Hargle Road Van & Storage Co., 183 Neb. 201, 159 N.W.2d 302 (1968).

**75-302 Terms, defined.**

For purposes of sections 75-301 to 75-343 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Attended services means an attendant or caregiver accompanying a minor or a person who has a physical, mental, or developmental disability and is unable to travel or wait without assistance or supervision;

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

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

(4) 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;

(5) Commission means the Public Service Commission;

(6) 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;

(7) 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;

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

(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) Licensed care transportation services means transportation provided by an entity licensed by the Department of Health and Human Services as a residential child-caring agency as defined in section 71-1926 or child-placing agency as defined in section 71-1926 or a child care facility licensed under the Child Care Licensing Act to a client of the entity or facility when the person providing transportation services also assists and supervises the passenger or, if the client is a minor, to a family member of a minor when it is necessary for agency or facility staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Licensed care transportation services must be incidental to and in furtherance of the social services provided by the entity or facility to the transported client;



(13) 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;

(14) 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;

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

(16) 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;

(17) 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;

(18) 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;

(19) Residential care means care for a minor or a person who is physically, mentally, or developmentally disabled who resides in a residential home or facility regulated by the Department of Health and Human Services, including, but not limited to, a foster home, treatment facility, residential child-caring agency, or shelter;

(20) Residential care transportation services means transportation services to persons in residential care when such residential care transportation services and residential care are provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department;

(21) Supported transportation services means transportation services to a minor or for a person who is physically, mentally, or developmentally disabled when the person providing transportation services also assists and supervises the passenger or transportation services to a family member of a minor when it is necessary for provider staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Supported transportation services must be provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department, and the driver must meet department requirements for (a) training or experience working with minors or persons who are physically, mentally, or developmentally disabled, (b) training with regard to the specific needs of the client served, (c) reporting to the department, and (d) age. Assisting and supervising the passenger shall not necessarily require the person providing transportation services to stay with the passenger after the transportation services have been provided; and

(22) Transportation network company has the definition found in section 75-323. A transportation network company shall not own, control, operate, or manage drivers' personal vehicles.

**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; Laws 2011, LB112, § 1; Laws 2013, LB265, § 45; Laws 2015, LB629, § 23.

#### Cross References

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

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. *Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn.*, 191 Neb. 1, 213 N.W.2d 443 (1973).

In considering an application for a permit as a contract carrier, the Nebraska State Railway Commission is required to

weigh the special needs of shippers desiring contract service against the adequacy of existing common carrier service. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972).

### 75-303 Motor carriers; scope of law.

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and household goods by a regulated motor carrier for hire in intrastate commerce except for the following:

(1) A motor carrier for hire in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;

(4) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(5) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(6) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(7) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(8) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(9) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organization as defined in section 13-1203 engaged in the transportation of passengers in the state;

(10) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service;

(11) A motor carrier engaged in attended services under contract or subcontract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act;

(12) A motor carrier engaged in residential care transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements;

(13) A motor carrier engaged in supported transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements; and

(14) A motor carrier engaged in licensed care transportation services if the motor carrier files a certificate with the commission that such provider meets the minimum driver standards, insurance requirements, and equipment standards prescribed by the commission. Insurance requirements established by the commission shall be consistent with the insurance requirements established by the Department of Health and Human Services for attended services, residential care transportation services, and supported transportation services.

**Source:** Laws 1963, c. 425, art. III, § 3, p. 1376; Laws 1969, c. 606, § 2, p. 2468; Laws 1972, LB 1178, § 1; Laws 1973, LB 54, § 1; Laws 1973, LB 70, § 1; Laws 1973, LB 345, § 2; Laws 1974, LB 762, § 1; Laws 1981, LB 85, § 2; Laws 1981, LB 144, § 8; Laws 1983, LB 98, § 1; Laws 1989, LB 78, § 19; Laws 1993, LB 412, § 3; Laws 1993, LB 413, § 3; Laws 1995, LB 424, § 23; Laws 1996, LB 1218, § 44; Laws 1999, LB 594, § 67; Laws 2011, LB112, § 2.

#### Cross References

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

The entitlement to an exemption under this section will deny the Public Service Commission its jurisdiction over a qualified exempt carrier. In re Application of Hunt Transportation, 214 Neb. 236, 333 N.W.2d 883 (1983).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle

carriers transporting livestock in intrastate commerce. Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

### **75-303.01 Nonemergency medical transportation for medicaid clients; contracts authorized.**

(1) The Department of Health and Human Services, a medicaid-managed care organization under contract with the department, or another agent working on the department's behalf may contract for nonemergency medical transportation for medicaid clients with a regulated motor carrier holding a designa-

tion of authority issued pursuant to subsection (3) of section 75-311 to provide medicaid nonemergency medical transportation services or that has been authorized to provide such services by the commission prior to April 28, 2017.

(2) While operating under a designation of authority issued pursuant to subsection (3) of section 75-311, a regulated motor carrier shall comply with (a) the requirements of the Department of Health and Human Services to protect the safety and well-being of department clients, including training, driver standards, background checks, and the provision and quality of service and (b) the rules and regulations adopted, promulgated, and enforced by the commission governing insurance requirements, equipment standards, and background checks.

**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; Laws 2017, LB263, § 82.

### **75-303.02 Contracts for transportation; requirements.**

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

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

(b) 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

(c)(i) There is no regulated motor carrier serving the area in which the client needs transportation, (ii) 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 (iii) the regulated carrier cannot or will not provide such service at the rate specified in subsection (2) of section 75-303.03.

(2) This section does not apply to a regulated motor carrier holding a designation of authority issued pursuant to subsection (3) of section 75-311.

**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; Laws 2017, LB263, § 83.

#### **Cross References**

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

### **75-303.03 Reimbursement for transportation costs; conditions; exemption from commission regulation or commission rate regulation.**

(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 75-303.02.

(2) The Department of Health and Human Services 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, (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, or (c) provides nonemergency medical transportation of medicaid clients pursuant to subsection (3) of section 75-311.

(3) Rates for nonemergency medical transportation service providers with a designation of authority issued pursuant to subsection (3) of section 75-311 are not subject to commission regulation, and regulated motor carriers with such a designation reimbursed under this section are not subject to commission rate regulation for such reimbursement rates.

(4)(a) 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:

(i) The individual is under contract with the department and provides transportation to the eligible person; and

(ii) The eligible person has chosen the individual to provide the transportation.

(b) 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.

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

(d) The department may adopt and promulgate rules and regulations to implement this subsection.

**Source:** Laws 2006, LB 1069, § 2; Laws 2007, LB296, § 699; Laws 2017, LB263, § 84.

#### Cross References

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

### **75-304 Classification of carriers; rules and regulations; contract carriers; insurance; applicability of rules and regulations.**

(1) The commission may establish such just and reasonable classifications of groups of carriers, included in the terms common carrier and contract carrier, as the special nature of the services performed by such carriers require and adopt and promulgate such just and reasonable rules, regulations, and requirements, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to 75-322. All certificates and permits issued by the commission shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

(2) Contract carriers shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each motor vehicle in minimum amounts to be established by the commission.

(3) The commission shall adopt and promulgate rules and regulations to carry out sections 75-323 to 75-343. The rules and regulations found in chapter 3 of title 291 of the Nebraska Administrative Code shall not apply to transportation network companies. If there is any conflict between sections 75-301 to 75-322 and sections 75-323 to 75-343 regarding the regulation of transportation network companies, the provisions of sections 75-323 to 75-343 shall apply.

**Source:** Laws 1963, c. 425, art. III, § 4, p. 1378; Laws 1969, c. 606, § 3, p. 2469; Laws 1989, LB 78, § 20; Laws 1993, LB 412, § 6; Laws 1994, LB 414, § 68; Laws 1995, LB 424, § 26; Laws 2015, LB629, § 24.

#### **75-304.01 Rates, fares, and charges; commission prescribe; when.**

The commission shall prescribe minimum rates, fares, and charges for contract carriers. No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of service thereunder, except after ten days' notice of the proposed change filed in the form and manner provided for common carrier rate changes. The notice shall plainly state the change proposed and the time when the change will take effect. No contract carrier shall demand, charge, or collect less compensation for such transportation than the charges to be made by common carriers for the same transportation in accordance with sections 75-118 to 75-155 and 75-301 to 75-322, as affected by any rule, regulation, or practice so filed or as prescribed by the commission. It is unlawful for any such carrier to charge less than the rates, fares, and charges approved by the commission.

**Source:** Laws 1972, LB 1370, § 3; Laws 1974, LB 438, § 1; Laws 1994, LB 414, § 69; Laws 1995, LB 424, § 27.

#### **75-304.02 Mover of household goods; certificate or permit, when required.**

(1) Any mover of household goods operating in a city or village of this state or within a radius of five miles of the corporate limits of such city or village and engaged in the transportation for hire of household goods in such city or village or within such five-mile radius prior to January 1, 1996, may continue operations for a period of up to one year after April 4, 1996, without obtaining a certificate of public convenience and necessity or a permit issued by the commission authorizing such operations. Beginning on and after one year after April 4, 1996, such mover of household goods shall be subject to sections 75-301 to 75-322.

(2) During the one-year period after April 4, 1996, the commission shall grant the authority to engage in the transportation for hire of household goods in such city or village or within such five-mile radius to any such mover of household goods which applies to the commission and furnishes evidence of its operations in a manner and form as directed by the commission by rule and regulation. The authority to engage in the transportation of household goods shall become effective one year after April 4, 1996.

**Source:** Laws 1996, LB 1218, § 45.

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

(1) Every regulated motor carrier subject to sections 75-301 to 75-322 other than transportation network companies 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 (a) the proportion of his or her fleet so registered or (b) 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.

(2) Every transportation network company shall pay an annual fee. The company may choose to pay either twenty-five thousand dollars or not to exceed eighty dollars for each personal vehicle operated by a driver of the transportation network company. The commission shall establish the amount per vehicle so that the amount collected does not exceed the amount actually necessary to sustain the administration and enforcement of laws, rules, and regulations governing transportation network companies.

(3) 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. The State Treasurer shall credit fees received pursuant to subsection (2) of this section to the Transportation Network Company Regulation Cash Fund for enforcement of laws, rules, and regulations governing transportation network companies. The State Treasurer shall credit fees received pursuant to subsection (1) of this section 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; Laws 2015, LB629, § 25.

**75-306 Receipt for fees; license plates and renewal tabs.**

Receipt for the payment of annual fees shall be issued by the commission. The commission shall issue sufficient license plates and renewal tabs to any regulated motor carrier who is in compliance with sections 75-301 to 75-322 and the rules and regulations of the commission, except contractors operating pursuant to section 75-303.02 and transportation network companies, for the purpose of identification of regulated motor carriers subject to sections 75-301 to 75-322 and to distinguish those regulated motor carriers from other commercial motor carriers not subject to such sections. The Director of Motor Vehicles shall prepare a form of license plate and renewal tab for such regulated motor carriers and furnish a sufficient supply of them to the commission.

**Source:** Laws 1963, c. 425, art. III, § 6, p. 1379; Laws 1969, c. 606, § 5, p. 2471; Laws 1989, LB 78, § 22; Laws 1993, LB 412, § 8; Laws 1994, LB 414, § 70; Laws 1995, LB 424, § 29; Laws 1996, LB 1218, § 47; Laws 2015, LB629, § 26; Laws 2017, LB263, § 85.

**75-307 Insurance and bond requirements; subrogation; applicability of section.**

(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.

(4) This section does not apply to transportation network companies.

**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; Laws 2015, LB629, § 27.

**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.**

**75-308 Tariff; publication; unlawful practices.**

It is unlawful for a regulated motor carrier to engage in the transportation of passengers or household goods in intrastate commerce unless the motor carrier has filed, published, and kept open for inspection its tariff schedule as provided in section 75-124 in the manner prescribed by the commission pursuant to such section. No such motor carrier shall engage in the transportation of household



goods in intrastate commerce unless it has obtained a copy of the most current applicable tariff, or a tariff prepared by a tariff publishing bureau or an individual, which conforms with the rates and charges prescribed by the commission.

**Source:** Laws 1963, c. 425, art. III, § 8, p. 1380; Laws 1983, LB 309, § 1; Laws 1995, LB 424, § 34.

**75-308.01 Operational conditions; meetings of motor carriers authorized; purposes; joint-line arrangements authorized; joint rates; how treated.**

(1) Any two or more motor carriers authorized to operate under a common tariff approved by the commission under section 75-118 or 75-304.01 shall be permitted to meet and review operational conditions of affected motor carriers for the following purposes:

(a) To study the ratio of expenses to income and general financial condition of the motor carrier industry in Nebraska;

(b) To determine whether any change or changes should be made in any commission-approved tariff;

(c) To consider the joint employment of technical assistance to accomplish the purposes set forth in this section;

(d) To determine whether it is necessary to file an application to make tariff changes; and

(e) To do all other acts necessary to accomplish the filing of a rate application with the commission.

(2) Motor carriers may establish joint-line arrangements for intrastate transportation of property to exchange or to interline freight that each motor carrier transports over a part of the joint route and to agree to a joint rate for the transportation service. Motor carriers may also collectively participate in, establish, and use a freight classification system and mileage guide that can be used to determine the rates for intrastate transportation.

(3) The laws of this state relating to competition shall not apply to motor carriers and other persons who carry out the activities described in subsection (2) of this section. The commission may regulate the activities described in subsection (2) of this section and shall investigate and issue orders when necessary to preserve the sound and efficient transportation of property by motor carriers.

**Source:** Laws 1978, LB 845, § 1; Laws 1994, LB 414, § 71; Laws 1995, LB 424, § 35.

**75-309 Certificate of public convenience and necessity or permit; required; exception.**

Except for operations pursuant to a contract authorized by sections 75-303.02 and 75-303.03, it shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of sections 75-101 to 75-155 and 75-301 to 75-322 to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, a permit to such

contract carrier, or a permit to a transportation network company under section 75-324, issued by the commission which authorizes such operations.

**Source:** Laws 1963, c. 425, art. III, § 9, p. 1381; Laws 1967, c. 479, § 15, p. 1482; Laws 1989, LB 78, § 24; Laws 1993, LB 412, § 9; Laws 1994, LB 414, § 72; Laws 1995, LB 424, § 36; Laws 2015, LB629, § 28; Laws 2017, LB263, § 86.

The Public Service Commission has original jurisdiction and sole power to grant, amend, deny, revoke, or transfer common carrier certificates of public convenience and necessity, and such proceedings are administrative and legislative in character. In re Application of Kiltbau, 236 Neb. 811, 464 N.W.2d 162 (1991).

Applicant's fitness and his claimed violation hereof are to be judged by the commission on the record before it. Robinson v.

National Trailer Convoy, Inc., 188 Neb. 474, 197 N.W.2d 633 (1972).

Carrier has no right to tack authorities unless that right is granted in certificate. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

**75-309.01 Transportation of passengers for hire; operation without certificate; nuisance; penalty.**

Each motor vehicle owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309 is declared to be a public nuisance and subject to seizure and confiscation by any person charged with the enforcement of this section. Any motor vehicle which is owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309 may be seized upon the arrest of the person who uses or owns the motor vehicle, and upon the conviction of the person for the violation of such section, the motor vehicle shall, as a part of the element of the violation, at the discretion of the court, be forfeited to the state and delivered to the commission to be disposed of as provided by law. The sale shall be subject to any liens of record. The commission shall remit the proceeds of the sale to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1963, c. 427, § 1, p. 1432; Laws 1994, LB 414, § 73; Laws 1995, LB 424, § 37; Laws 1996, LB 1218, § 49.

**75-309.02 Repealed. Laws 1989, LB 78, § 37.**

**75-309.03 Repealed. Laws 1995, LB 424, § 54.**

**75-310 Application for certificate or permit; petition for relief; requirements.**

Except for applications to operate a transportation network company, applications for certificates or permits and petitions for relief shall be made to the commission in writing and shall be in such form and contain such information as the commission shall by rule require. A summary of the authority or relief sought in an application or petition shall be given to interested persons according to the rules the commission shall adopt. After notice of an application or petition has been given to interested persons as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed.

**Source:** Laws 1963, c. 425, art. III, § 10, p. 1381; Laws 1967, c. 479, § 16, p. 1482; Laws 2015, LB629, § 29.

Rule relating to tacking of authorities is within the ambit of authority granted to commission under this and other related

sections. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

**75-311 Certificates; permits; designation of authority; issuance; review by commission; effect.**

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise the application shall be denied.

(3) A designation of authority shall be issued to any regulated motor carrier holding a certificate under subsection (1) of this section or a permit under subsection (2) of this section authorizing such carrier to provide medicaid nonemergency medical transportation services pursuant to a contract with (i) the Department of Health and Human Services, (ii) a medicaid-managed care organization under contract with the department, or (iii) another agent working on the department's behalf as provided under section 75-303.01, if it is found after notice and hearing from the application or from any hearing held on the application that the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients. In determining whether the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients, the commission shall consult with the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the department or his or her designee.

(4) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(5) After the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(6) This section shall not apply to transportation network companies holding a permit under section 75-324 or operations pursuant to a contract authorized by sections 75-303.02 and 75-303.03.

**Source:** Laws 1963, c. 425, art. III, § 11, p. 1381; Laws 1969, c. 606, § 6, p. 2471; Laws 1972, LB 1370, § 2; Laws 1974, LB 438, § 2; Laws 1989, LB 78, § 25; Laws 1990, LB 980, § 27; Laws 1993, LB 412, § 10; Laws 1994, LB 414, § 74; Laws 1995, LB 424, § 38; Laws 1996, LB 1218, § 50; Laws 2011, LB112, § 3; Laws 2015, LB629, § 30; Laws 2017, LB263, § 87.

**1. Public convenience and necessity**  
**2. Authority of commission**  
**3. Burden of proof**

**1. Public convenience and necessity**

A litigant may not request a certificate of public convenience and necessity and in the same action and at the same time challenge the constitutionality of sections 75-301 through 75-322. In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. An applicant who has been operating under color of authority need not make the same showing that an applicant who has never operated must make, and there is a presumption that the proposed service is or will be required by the present or future public convenience and necessity. When an applicant has been illegally conducting business for a sufficient period of time under a mistaken belief that its operations were legal, the color of right principles of law apply. However, if the applicant knew that its operations were illegal, then the color of right principles do not apply. In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 578 N.W.2d 28 (1998).

Public Service Commission's finding that applicant's continuing service after three warnings of illegal operation establishes applicant unfit to hold certificate of convenience and necessity was not arbitrary and capricious action. In re Application of A Touch of Class Limousine, 243 Neb. 33, 497 N.W.2d 71 (1993).

The existence of an adequate and satisfactory service by motor carriers already in the area is complete negation of public need and demand for added service by another carrier. In re Application of Kiltbau, 236 Neb. 811, 464 N.W.2d 162 (1991).

To comply with this section, the applicant must prove, in part, that the applicant is fit financially. In re Application of Overland Armored Exp., 229 Neb. 524, 428 N.W.2d 166 (1988).

Public demand or need, which an applicant must prove to obtain a certificate from the Public Service Commission, is a present actual need or a need which will likely occur within the reasonably immediate or foreseeable future. In re Application of Renzenberger, Inc., 225 Neb. 30, 402 N.W.2d 294 (1987).

Public Service Commission's order granting certificate of public convenience and necessity was arbitrary and capricious; applicant had not met its burden of proof. In re Application of Red Carpet Limo. Serv., Inc., 221 Neb. 340, 377 N.W.2d 91 (1985).

In determining the issue of public convenience and necessity, controlling questions are whether the operation will serve a useful purpose responsive to a public demand or need; whether this purpose can or will be served as well by existing carriers; and whether it can be served by applicant in a specified manner without endangering or impairing the operations of existing carriers, contrary to public interest. In re Application of Nebraska Transport Co., Inc., 210 Neb. 269, 313 N.W.2d 686 (1981).

Under this section, a certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found after notice and

hearing that the applicant is fit, willing, and able properly to perform the service proposed, and to conform to the rules and regulations of the Nebraska Public Service Commission and that the proposed service is or will be required by the present or future public convenience and necessity. Gentry Real Estate Co. v. King's Limousine Service, Inc., 201 Neb. 761, 272 N.W.2d 359 (1978).

Applicant for a certificate of public convenience and necessity who has been operating under color of authority enjoys a presumption that the proposed service applied for is or will be required by present or future public convenience and necessity. Dilts Trucking, Inc. v. Peake, Inc., 197 Neb. 459, 249 N.W.2d 732 (1977).

There must be finding that applicant is fit, willing, and able to perform the proposed service, and that the service offered is or will be required by public convenience and necessity in granting a certificate therefor. Robinson v. National Trailer Convoy, Inc., 188 Neb. 474, 197 N.W.2d 633 (1972).

Finding that proposed operation of a contract carrier will be consistent with public interest is necessary for issuance of permit. This means that the service must not conflict with the legislative policy of the state in dealing with transportation by motor vehicles. Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 186 Neb. 261, 182 N.W.2d 648 (1971).

Conditions to be shown by applicant for contract carrier permit stated; consistent with the public interest distinguished from public convenience and necessity. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., 183 Neb. 229, 159 N.W.2d 310 (1968).

**2. Authority of commission**

The determination of what is consistent with public convenience and necessity is for the Public Service Commission and if there is evidence to sustain such determination the Supreme Court cannot intervene. Hopken v. Building Movers, Inc., 197 Neb. 195, 247 N.W.2d 633 (1976); Groenewold v. Building Movers, Inc., 197 Neb. 187, 247 N.W.2d 629 (1976).

Where there is evidence to sustain the factors for and against the issuance of a permit to a contract carrier, required to be considered by the Nebraska State Railway Commission, the determination of the public interest is for the commission and not the courts. Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 188 Neb. 584, 198 N.W.2d 195 (1972).

Tacking is an extension of the authorized service under regulation of the Nebraska State Railway Commission, and the right to tack does not exist unless granted by the commission. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

**3. Burden of proof**

Statement by Public Service Commission that it is inconsistent with the public interest to grant a contract carrier permit when existing common carriers can adequately serve the shipper improperly exhibited a preference for common carriers over contract carriage. Upon proof by an applicant for contract

carrier authority that the proposed service is specialized and tailored to the customer's distinct needs, the burden shifts to protesting common carriers to show they can provide the same specialized service; thus the Public Service Commission erred in requiring an applicant for a contract carrier permit to establish the inability of existing common carriers to provide the same specialized service it proposed to provide. In re Application of Northland Transp., 239 Neb. 918, 479 N.W.2d 764 (1992).

The applicant has the burden to establish that its proposed service is specialized and fits the needs of the proposed contracting shipper or shippers; that it is fit, willing, and able to perform the service; and that the proposed operation will be consistent with the public interest. If the service proposed by the applicant can be performed as well by common carriers, the application should be denied because a need for a contract carrier has not been established. The Public Service Commission must weigh the special requirements of the shipper against the adequacy of the existing common carrier service. In re Application of Slack, 234 Neb. 704, 452 N.W.2d 538 (1990).

The burden is on the applicant to show that the extension of its present authority is required by the public convenience and necessity. Controlling questions in determining the issue of

public convenience and necessity stated. In re Application of Petroleum Transport Service, Inc., 210 Neb. 411, 315 N.W.2d 245 (1982).

Burden is on the applicant for a certificate of public convenience and necessity to show he has met all the requirements of this section. In re Application of Greyhound Lines, Inc., 209 Neb. 430, 308 N.W.2d 336 (1981).

A certificate of public convenience and necessity may be issued only when required by the present or future public convenience and necessity and applicant has burden of proof. Ruan Transp. Corp. v. Herman Bros., Inc., 192 Neb. 343, 220 N.W.2d 245 (1974).

Burden rested upon applicant for change of route to show change was required by public convenience and necessity. Parsons v. Nebraska State Railway Commission, 181 Neb. 185, 147 N.W.2d 521 (1966).

Burden of proof is upon the applicant in order to obtain a certificate of public convenience and necessity. Simmerman v. National Trailer Convoy, Inc., 179 Neb. 400, 138 N.W.2d 481 (1965).

### **75-312 Repealed. Laws 1995, LB 424, § 54.**

#### **75-313 Certificate; permit; terms.**

(1) Except as provided in subsection (2) of this section, each certificate shall specify the service to be rendered, the routes, the fixed termini, if any, and the intermediate and off-route points, if any, and in case of operations not over specified routes or between fixed termini, the territory within which such carrier is authorized to operate. Each permit shall specify the business of the contract carrier covered thereby and the scope thereof. There shall, at the time of issuance, and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate or permit such reasonable terms, conditions, and limitations as the public convenience and necessity, or the character of the holder as a contract carrier, may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission. No terms, conditions, or limitations shall restrict the right of a contract carrier to substitute or add contracts within the scope of the permit, or to add to the equipment and facilities within the scope of the permit, as the development of the business and the demands of the public may require.

(2) This section does not apply to a transportation network company.

**Source:** Laws 1963, c. 425, art. III, § 13, p. 1382; Laws 2015, LB629, § 31.

Willful failure to perform a service and dormancy cannot in all cases be equated. Dahlsten v. Harris, 191 Neb. 714, 217 N.W.2d 813 (1974).

Unless carrier's certificate includes right to tack authorities, it has no such right. Nebraska State Railway Commission v.

Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

#### **75-314 Deviation from route; special or charter parties.**

A common carrier by motor vehicle operating under any certificate issued under section 75-311 may occasionally deviate from the route over which or the fixed termini between which it is authorized to operate under the certificate under such general or special rules and regulations as the commission may prescribe. Any common carrier by motor vehicle who transports passengers under its certificate may operate in intrastate commerce to any place carrying

special or charter parties under such rules and regulations as prescribed by the commission.

**Source:** Laws 1963, c. 425, art. III, § 14, p. 1382; Laws 1995, LB 424, § 39.

**75-315 Certificates; permits; effective date; revocation or suspension; grounds.**

Permits and certificates shall be effective from the dates specified in the permits and certificates and shall remain in effect until terminated as provided in this section and section 75-316. A permit or certificate may, upon application of the permit or certificate holder, in the discretion of the commission, be revoked or may, upon complaint or on the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any of the provisions of sections 75-101 to 75-801, with any lawful order, rule, or regulation of the commission promulgated under such sections, or with any term, condition, or limitation of the permit or certificate. The commission may, after notice and a hearing, suspend or revoke the permit or certificate of a motor carrier who refuses or subjects to any undue or unreasonable delay any pickup, delivery, or connecting line service, to any shipper, consignee, carrier, or any other person or persons, at any point authorized to be served by such carrier, notwithstanding any hot cargo agreement or other agreement between such motor carrier and a labor organization or any other organization or person.

**Source:** Laws 1963, c. 425, art. III, § 15, p. 1383; Laws 1969, c. 607, § 1, p. 2472; Laws 1995, LB 424, § 40.

An act or failure to act within the provisions of this section may be willful within the meaning of the statute even though a decision to cease operations under the certificate may be the consequence of circumstances such as financial failure over which the carrier may not have absolute control. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

The term "willful failure" as used in this section means a repeated or continued failure to file reports required by this act. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

Under the provisions of this section, the Nebraska Public Service Commission may, upon complaint or on the commis-

sion's own initiative and after notice and hearing, suspend, revoke, or change a certificate of a common carrier for willful failure to comply with any of the provisions of sections 75-101 to 75-801, R.R.S.1943. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

The willful failure herein is such behavior through acts of commission or omission which justifies a belief there was an intent entered into and characterizing the failure complained of. *Herman Brothers, Inc. v. Hennis Freight Lines, Inc.*, 192 Neb. 258, 220 N.W.2d 230 (1974).

**75-316 Suspension of service; approval of commission; voluntary revocation of certificate or permit.**

Except for circumstances beyond the control of the regulated motor carrier, such as strikes against such carrier, acts of God, and the common enemy, service under a certificate of public convenience and necessity or a permit shall not be suspended without first obtaining approval of the commission. Nothing in sections 75-101 to 75-801 shall prevent the holder of a certificate or permit from requesting revocation of such certificate or permit as provided for in section 75-315.

**Source:** Laws 1963, c. 425, art. III, § 16, p. 1383; Laws 1995, LB 424, § 41.

**75-317 Repealed. Laws 1995, LB 424, § 54.**

**75-318 Sale, transfer, lease, or consolidation; application; hearing; approval of commission required.**

It shall be lawful, only under the conditions specified in this section, for any regulated motor carrier or person or for two or more regulated motor carriers to:

(1) Consolidate or merge their properties or any part thereof or certificates of public convenience and necessity or permits, or any part thereof, into one ownership, management, or operation of the properties, certificates, or permits theretofore in separate ownership;

(2) Purchase, lease, or contract to operate the properties or any part thereof or the certificates or permits, or any part thereof, of another regulated motor carrier; or

(3) Acquire control of another regulated motor carrier or carriers through purchase of stock.

Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, certificates, or permits is proposed, the carrier or carriers or person seeking authority therefor shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with the rules of the commission. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it deems just and reasonable. If any of the certificates or permits proposed to be merged, consolidated, transferred, or leased are dormant, the commission may approve an application for consolidation, merger, transfer, or lease only upon proof of and a finding that such merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. If the proposed merger, consolidation, transfer, or lease of the certificates or permits will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve an application for merger, consolidation, transfer, or lease only upon proof of and a finding that the proposed merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. Any restrictions, qualifications, or conditions applicable to and contained in a particular certificate of public convenience and necessity or a permit at the time of the issuance thereof or thereafter made a part of such certificate or permit, excluding any restrictions, qualifications, or conditions of general application applicable to all regulated motor carriers or a segment thereof as a class and imposed by regulation of the commission, proposed to be merged, consolidated, transferred, or leased shall not be changed, altered, or removed without the proof required in section 75-311 for certificates and permits.

When authority is transferred as provided in this section, the commission shall simultaneously cancel the authority of the transferor which is transferred.

**Source:** Laws 1963, c. 425, art. III, § 18, p. 1384; Laws 1965, c. 446, § 4, p. 1416; Laws 1967, c. 479, § 18, p. 1483; Laws 1994, LB 414, § 75; Laws 1995, LB 424, § 42.

The court determined that the certificate of authority held by the appellant could not be transferred to another trucking company because the certificate was dormant. Under the facts of the case, the only traffic conducted under the certificate of authority was made pursuant to leases which violated the rules and regulations of the Nebraska Public Service Commission. *Herman Bros., Inc. v. Spector Industries, Inc.*, 209 Neb. 513, 308 N.W.2d 720 (1981).

Held improper to deny request for transfer of active authority merely because the transfer may enlarge competition. *Spector Freight System, Inc. v. Herman Bros., Inc.*, 197 Neb. 835, 251 N.W.2d 376 (1977).

Where commission approval of a transfer of authority hereunder and an issue of dormancy is properly raised, the Nebraska Public Service Commission must determine both the fact of

dormancy and on the basis of the evidence whether the public convenience and necessity require the transfer. *Dahlsten v. Harris*, 191 Neb. 714, 217 N.W.2d 813 (1974).

Transfer of operating rights may be permitted without restrictions if after notice and hearing Railway Commission finds requirements herein have been met. *Andrews Van Lines, Inc. v. Smith*, 187 Neb. 533, 192 N.W.2d 406 (1971).

The reference in this section to an enlargement of competition over that then existing means a substantial or material increase in competition. *Hunt Transportation, Inc. v. Yellow Cab, Inc.*, 186 Neb. 518, 184 N.W.2d 651 (1971).

Evidence established that certificate to be transferred was dormant. *Ace Gas, Inc. v. Peake, Inc.*, 184 Neb. 448, 168 N.W.2d 373 (1969).

### **75-319 Sale, transfer, lease, or consolidation; temporary approval.**

(1) Pending the determination of an application filed under section 75-318, the commission may, in its discretion, after not less than five days' notice to interested carriers, and without hearings or other proceedings, grant temporary approval, for a period not exceeding ninety days, of a lease of the regulated motor carrier properties and of the certificates or permits sought to be acquired to the person filing the application, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such regulated motor carrier properties, and certificates or permits sought to be acquired, or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(2) Transportation service rendered under such temporary authority shall be subject to the provisions of sections 75-101 to 75-801 and to the rules, regulations, and requirements of the commission.

(3) The grant of temporary authority and the operations thereunder shall not be admissible in evidence to establish or prove the present or future public convenience and necessity.

(4) No renewal or extension of the period of ninety days provided for in this section shall be granted.

**Source:** Laws 1963, c. 425, art. III, § 19, p. 1386; Laws 1995, LB 424, § 43.

### **75-320 Sale or transfer of stock ownership; change in partnership or limited liability company; approval of commission; hearing.**

No transfer, assignment, or sale of stock or change of stock ownership or any interest therein which will directly or indirectly result in a transfer, assignment, sale, or change in the control of the corporation holding a certificate or permit, and no change of one or more of the partners or members, when the certificate holder is a partnership or a limited liability company, will be effective or valid, unless the carrier or person seeking to acquire control of the corporation or unless the applicant seeking to effect a change in one or more of the partners or members in a partnership or limited liability company holding a certificate or permit, respectively, obtains approval of the commission under such rules and regulations as the commission may prescribe. Approval of the proposed transaction, either in whole or in part, may be given, after notice and hearing, only upon findings by the commission that such transaction will be consistent with



the public interest, that it will not unduly restrict competition, and that the applicant is fit, willing, and able to properly perform the proposed service.

**Source:** Laws 1963, c. 425, art. III, § 20, p. 1386; Laws 1993, LB 121, § 465.

Mere absence of applicant does not constitute failure of evidence of fitness, willingness, and ability. *Abler v. Herman Bros., Inc.*, 187 Neb. 530, 192 N.W.2d 410 (1971).

**75-321 Certificate; permit; death or incompetency of holder; transfer; approval of commission.**

Upon the death of an individual holder of a certificate or permit, or upon an individual certificate or permit holder being legally declared mentally incompetent, the authority conferred by such certificate shall continue with the legal representative of the deceased or mentally incompetent holder thereof for a period of one year from the date of the holder's death or the declaration of mental incompetency, after which the authority conferred thereby shall cease and the certificate or permit be revoked and canceled without further order of the commission, unless application has been made to transfer such authority, in which case the authority shall continue with the legal representative until there has been a final determination of the application. In the event that application is made by the legal representative not less than thirty days prior to the end of such period of one year, the commission may, at its discretion and for cause shown, allow the transfer of the authority to the executors, administrators, guardians, trustees, or other legal representatives of the deceased holder for a period to be fixed by the commission. In considering such application, pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or mentally incompetent person may be deemed cause for the granting thereof. When the individual holder of a certificate or permit dies or is declared legally incompetent and an application is made to transfer the authority issued under the certificate or permit to his or her legal representative, the commission may dispose of the application without hearing, if notice is given to all interested parties.

**Source:** Laws 1963, c. 425, art. III, § 21, p. 1387; Laws 1986, LB 1177, § 31.

This section is not applicable after order authorizing permanent transfer. *Andrews Van Lines, Inc. v. Smith*, 187 Neb. 533, 192 N.W.2d 406 (1971).

**75-322 Certificate; permit; trustee, receiver, or assignee; continue operations; petition; order of commission.**

If a trustee, receiver, assignee, custodian, or similar officer or officers, shall be appointed by a court of competent jurisdiction, or shall be selected by creditors in accordance with provisions of law, with authority to take or retain possession and to operate the property and business of a certificate or permit holder, such officer or officers shall have authority to perform the service authorized in the certificate or permit of the debtor carrier for a period of ninety days from his or their appointment or selection. Such officer or officers may petition the commission for authority to conduct the operations for an additional period of time, and the commission may, for good cause shown, grant such authority. If such petition is filed within ninety days of the appointment or selection of the petitioner or petitioners, he or they shall have the

authority to continue such operations pending decision by the commission on the petition. In considering such petitions, pertinent orders or decrees of the court having jurisdiction may be deemed cause for the granting thereof.

**Source:** Laws 1963, c. 425, art. III, § 22, p. 1387.

A trustee in bankruptcy, receiver, or custodian in possession under a bankruptcy arrangement, of a carrier, has the rights in the certificate of convenience and necessity of the carrier which are provided by this section, and these rights must be respected

by the Nebraska Public Service Commission. *Neb. Public Service Commission v. Grand Island Mov. & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

### (b) TRANSPORTATION NETWORK COMPANY

#### **75-323 Terms, defined.**

For purposes of sections 75-301 to 75-343, unless the context otherwise requires:

(1) Application open stage means the time period from the moment a participating driver logs on to the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger and from the moment the driver completes the transaction on the online-enabled application or platform or the passenger exits the vehicle, whichever is later, until the driver either accepts another ride request on the online-enabled application or platform or logs off the online-enabled application or platform;

(2) Engaged stage means the time period from the moment a participating driver accepts a ride request on the transportation network company online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the passenger exits the vehicle, whichever is later;

(3) Insurance policy means a policy placed with an authorized Nebraska insurer or with a surplus lines insurer pursuant to Chapter 44;

(4) Participating driver or driver means any person who uses a personal vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers;

(5) Passenger means a passenger in a personal vehicle for whom a driver provides transportation and who is connected with a driver by a transportation network company's online-enabled application or platform;

(6) Passengers on board stage means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company;

(7) Personal vehicle means a passenger car as defined in section 60-345 that a driver owns, leases, or is otherwise authorized to use to provide services on a transportation network company's online-enabled application or platform;

(8) Prearranged ride means a ride in which a participating driver is matched to a passenger through a transportation network company's online-enabled application or platform and does not include the on-demand summoning of a ride or street hail. Prearranged ride does not include shared-expense carpool or vanpool arrangements;

(9) Service means the provision of transportation by a driver to a passenger with whom a transportation network company matches the driver;

(10) Transportation network company means an organization, including a corporation, a limited liability company, a partnership, a sole proprietor, or any

other entity, operating in this state that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with participating drivers using a personal vehicle. Transportation network company does not include medicaid nonemergency medical transportation brokerage services provided pursuant to a contract with the Department of Health and Human Services; and

(11) Transportation network company insurance means an insurance policy that covers loss arising from a participating driver's use of a personal vehicle in connection with a transportation network company's online-enabled application or platform.

**Source:** Laws 2015, LB629, § 2.

**75-324 Operation of transportation network company; permit required; application; contents; commission; duties.**

(1) No person shall operate a transportation network company in Nebraska without first obtaining a permit from the commission. The application for a permit shall be in writing, under oath, submitted to the commission, and accompanied by the fee required under section 75-305. A duly authorized official of the applicant who possesses the full power and authority to make binding representations on the applicant's behalf shall subscribe to the oath on the application. The application shall contain the following information:

- (a) The legal name of the applicant;
- (b) Any name under which the applicant will or does conduct business in Nebraska;
- (c) The applicant's primary business address and telephone number;
- (d) A copy of the articles of organization or certificate to transact business in Nebraska;
- (e) The name, address, and telephone number of the applicant's registered agent in Nebraska; and
- (f) A statement that the applicant agrees to adhere to the statutes of Nebraska and to the rules and regulations of the commission regulating transportation network companies.

(2)(a) The commission shall review the application for completeness and verify the information submitted. If the commission finds any information incomplete or inaccurate, the commission shall notify the applicant and give the applicant the opportunity to complete the application.

(b) If an applicant is duly certified or permitted to operate a transportation network company in at least one other state, the commission shall, within sixty days after receiving a complete application, issue a permit to the applicant if the applicant meets the requirements of sections 75-323 to 75-343.

(c) If an applicant is not duly certified or permitted to operate a transportation network company in at least one other state, the applicant shall bear the burden of demonstrating that (i) the applicant has sufficient financial resources to provide transportation network company services in the proposed service territory, (ii) the applicant has sufficient technical competency to provide transportation network company services in the proposed service territory, and (iii) the applicant has sufficient managerial resources to provide transportation network company services in the proposed service territory. If the requirements

of subdivisions (i) through (iii) of this subdivision are met and the applicant has satisfactorily provided all of the information in the application required under this section, the commission shall, within ninety days after receiving a complete application, issue a permit to the applicant if the applicant meets the requirements of sections 75-323 to 75-343.

(3) A participating driver contracting with a transportation network company holding a valid permit from the commission shall not be required to obtain a permit or certificate from the commission when driving pursuant to the terms of the contract with the transportation network company.

**Source:** Laws 2015, LB629, § 3.

**75-325 Transportation network company; duties; driver; duties; complaints; commission; powers.**

(1) Every transportation network company shall:

(a) Provide the commission with its email address and customer service telephone number;

(b) Display for the passenger either a picture of the driver's personal vehicle and a picture of the driver or the license plate number of the driver's personal vehicle on the online-enabled application or platform that a transportation network company uses to connect drivers and passengers;

(c) Maintain an agent for service of process in Nebraska;

(d) Maintain accurate and up-to-date records of all drivers providing services on behalf of the transportation network company, including the vehicle identification number for all personal vehicles to be operated in connection with the transportation network company;

(e)(i) Implement, enforce, and maintain a zero-tolerance policy on the use of drugs or alcohol applicable to any driver providing service for the transportation network company that prohibits a driver from using any amount of drugs or alcohol while the driver is providing service, (ii) provide a copy of the policy to the commission promptly upon adoption, and (iii) provide a copy of any revision to the policy promptly upon adoption;

(f) Implement an anti-discrimination policy that prohibits discrimination by any driver providing service for the company on the basis of race, national origin, religion, gender, physical or mental disability, medical condition, marital status, or age and file the policy with the commission;

(g) Maintain a web site that provides a customer service telephone number or email address of the transportation network company and that provides the telephone number and email address of the commission;

(h) Establish a driver training program designed to ensure that each driver safely operates his or her personal vehicle prior to the driver being able to offer services on the transportation network company's online-enabled application or platform;

(i) Maintain records required under sections 75-301 to 75-343 to be collected by the transportation network company, including records regarding participating drivers; and

(j) Cooperate with the commission and any employees, investigators, or duly authorized agents of the commission in the investigation of complaints received

by the commission from the public or in investigations initiated by the commission.

(2) A transportation network company shall not allow a driver to provide service if the company finds the driver to be in violation of its zero-tolerance policy required pursuant to subdivision (1)(e) of this section or if the driver has not successfully completed driver training pursuant to subdivision (1)(h) of this section. The transportation network company shall provide on its web site and its online-enabled application or platform notice of the zero-tolerance policy and the procedures to report a complaint about a driver with whom the passenger was matched when the passenger reasonably suspects the driver was under the influence of drugs or alcohol during the course of the prearranged ride. Upon receiving a complaint, a transportation network company shall immediately suspend the driver against whom the complaint was issued and conduct an investigation of the alleged violation. The suspension shall last for the duration of the investigation.

(3) If the commission has reasonable cause to believe a transportation network company is not enforcing the zero-tolerance policy filed with the commission, the commission shall investigate and, after notice and hearing, may enter an order requiring the transportation network company to enforce such policy, which may include suspension of the participating driver.

**Source:** Laws 2015, LB629, § 4.

**75-326 Participating driver; requirements; criminal history record information check.**

(1) A participating driver must possess a valid driver's license, proof of registration, and proof of automobile liability insurance and be at least twenty-one years of age.

(2) Prior to permitting a person to act as a driver, the transportation network company shall obtain and review a national criminal history record information check. The criminal disposition information retrieved by the transportation network company's national criminal history record information check shall be at least as comprehensive as the criminal disposition information retrieved by a national criminal history record information check performed by the Federal Bureau of Investigation pursuant to section 81-6,120. Nothing in this subsection shall be construed to require fingerprinting as part of the national criminal history record information check.

(3) A person who has four or more moving traffic violations or one or more major traffic violations in the three years prior to the date of the criminal background check shall not serve as a driver. For purposes of this subsection, the following offenses shall constitute major traffic violations:

(a) Failure to stop and report or render aid as required under section 60-696 or 60-697;

(b) Reckless driving in violation of any city or village ordinance or of section 60-6,213, 60-6,214, or 60-6,217;

(c) Speeding of more than thirty-five miles per hour over the speed limit; and

(d) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian.

(4) A person who has been convicted of or pled guilty or nolo contendere to driving under the influence of drugs or alcohol in the previous seven years in

this state or any other state or territory prior to the date of the criminal background check shall not serve as a driver.

(5) A person who is required to register as a sex offender or who has been convicted of or pled guilty or nolo contendere to any offense involving fraud, use of a motor vehicle to commit a felony, a crime involving property damage, theft, acts of violence, or acts of terror shall not serve as a driver.

**Source:** Laws 2015, LB629, § 5.

**75-327 Prearranged ride required; limit on hours; dynamic pricing; filing of rates; receipt; contents.**

(1) A participating driver shall not provide a ride unless it is a prearranged ride. No person shall be a participating driver for a period of more than twelve hours during each twenty-four-hour period.

(2)(a) A transportation network company may offer service for compensation, no charge, or suggested compensation.

(b) Except as provided in this section, transportation network companies shall not be subject to rate regulation by the commission and shall not be subject to provisions relating to rates and charges prescribed in sections 75-101 to 75-158.

(c) A transportation network company shall file with the commission the rates it uses to determine any compensation or suggested compensation on its online-enabled application or platform, including any use of dynamic pricing. The transportation network company shall keep the rate filing current and shall charge rates consistent with the rates it files with the commission.

(d) The following requirements apply if the transportation network company uses dynamic pricing through its online-enabled application or platform:

(i) The transportation network company's online-enabled application or platform shall provide clear visible indication that dynamic pricing is in effect prior to the passenger requesting a ride;

(ii) The transportation network company's online-enabled application or platform shall include a feature that requires the passenger to expressly confirm that he or she understands that dynamic pricing will be used in order for the ride request to be completed;

(iii) The transportation network company's online-enabled application or platform shall provide a fare estimator that enables the passenger to estimate the cost under dynamic pricing prior to requesting the ride; and

(iv) Dynamic pricing shall not be permitted during any state of emergency declared by the Governor.

(3) Upon completion of a prearranged ride, a transportation network company shall transmit an electronic receipt to the passenger's email address or online-enabled application documenting the following:

(a) The point of origin and destination of the prearranged ride;

(b) The total duration and distance of the prearranged ride;

(c) The total amount paid, if any, including the base fare and any additional charges incurred for distance traveled or duration of the prearranged ride; and

(d) The driver's first name.

**Source:** Laws 2015, LB629, § 6.

**75-328 Use of personal vehicle; requirements; initial safety inspection; annual inspection; reports available.**

(1) In order to be used under sections 75-323 to 75-343, a personal vehicle shall be in compliance with the Motor Vehicle Registration Act as required for a passenger car as defined in section 60-345.

(2) A transportation network company or a certified mechanic shall perform an initial safety inspection on each personal vehicle prior to approving it for use as a personal vehicle. The inspection shall include inspection of at least the following components and such components shall be in good working order:

- (a) Foot brakes;
- (b) Parking or emergency brakes;
- (c) Steering mechanism;
- (d) Windshield;
- (e) Rear window and other glass;
- (f) Windshield wipers;
- (g) Headlights;
- (h) Taillights;
- (i) Turn indicator lights;
- (j) Stop lights;
- (k) Front seat adjustment mechanism;
- (l) The opening, closing, and locking capability of doors;
- (m) Horn;
- (n) Speedometer;
- (o) Bumpers;
- (p) Muffler and exhaust system;
- (q) Tire conditions, including tread depth;
- (r) Interior and exterior rear-view mirrors; and
- (s) Safety belts for driver and passengers.

(3) Annually thereafter, a driver shall obtain such an inspection and approval of the driver's personal vehicle in order to continue its use as a personal vehicle. A driver shall maintain proof of the current inspection.

(4) A transportation network company shall make the initial and annual inspection reports available to the commission upon request.

**Source:** Laws 2015, LB629, § 7.

**Cross References**

**Motor Vehicle Registration Act**, see section 60-301.

**75-329 Inspection of records; complaint; commission powers; treatment of records.**

(1) The commission or the employees or duly authorized agents of the commission may, in a mutually agreed-upon setting, inspect any records held by a transportation network company which the commission determines are necessary to review to ensure public safety, including information obtained pursuant to section 75-326. Such inspection of records shall occur no more than once each calendar quarter unless the commission finds it necessary

pursuant to rules and regulations adopted and promulgated by the commission. Such inspection shall be conducted on an audit basis rather than a comprehensive basis.

(2) In response to a specific complaint, the commission may inspect any records held by a transportation network company which the commission determines are necessary to investigate and resolve the complaint, including information obtained pursuant to section 75-326.

(3) Any records obtained or inspected pursuant to this section shall not be considered public records subject to sections 84-712 to 84-712.09 and shall not be subject to disclosure by the commission except when publicly disclosed as evidence in a civil penalty proceeding pursuant to section 75-156 or in a criminal proceeding prosecuted by the state.

**Source:** Laws 2015, LB629, § 8.

#### **75-330 Noncompete provision.**

A transportation network company shall not require a participating driver to sign an agreement not to compete with the company in order to be matched with passengers through the company's online-enabled application or platform.

**Source:** Laws 2015, LB629, § 9.

#### **75-331 Transportation Network Company Regulation Cash Fund; created; use; investment.**

The Transportation Network Company Regulation Cash Fund is created. The commission shall use the fund to carry out the policies described in section 75-301, including, but not limited to, the regulation of transportation network companies and the enforcement of sections 75-323 to 75-343 and the rules and regulations adopted and promulgated by the commission under such sections, and for the costs associated with the administration of the fund. The fund shall contain the fees remitted pursuant to section 75-305. 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 2015, LB629, § 10; Laws 2018, LB618, § 1.  
Effective date July 19, 2018.

#### **Cross References**

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

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

#### **75-332 Driver; disclosure by transportation network company; contents; acknowledgment; notice to lienholder; record.**

(1) Prior to permitting a person to act as a driver, a transportation network company shall disclose in writing to each participating driver:

(a) The insurance coverage, the limits of liability, and any deductible amounts that the transportation network company maintains while the driver uses a personal vehicle in connection with a transportation network company's online-enabled application or platform;

(b) That in many personal automobile insurance policies, the driver's policy does not provide coverage for damage to the vehicle used by the driver, uninsured and underinsured motorist coverage, and other first-party claims



from the moment the driver logs on to the transportation network company's online-enabled application or platform to the moment the driver logs off the transportation network company's online-enabled application or platform. The driver should contact his or her insurer to determine coverage;

(c) That if the driver is planning to use a vehicle that has a lien against it to provide service in connection with a transportation network company, the driver of the vehicle must notify the lienholder at least seven days prior to using the vehicle to provide such service that the driver intends to use the vehicle to provide service in connection with a transportation network company by complying with subsection (3) of this section; and

(d) That the driver is responsible to know the laws, rules, and regulations that govern the service he or she provides in connection with a transportation network company.

(2) The transportation network company shall make the disclosure required by subdivision (1)(c) of this section a distinctive part of the driver's terms of service and shall require a separate acknowledgment of this disclosure by each driver by electronic or handwritten signature.

(3) The commission shall adopt and promulgate rules and regulations to establish a procedure to confirm that drivers have notified lienholders as required by subdivision (1)(c) of this section. The commission shall keep a record of such confirmation for at least five years and shall make such record available to lienholders.

**Source:** Laws 2015, LB629, § 11.

#### **75-333 Transportation network company insurance; requirements.**

(1) Beginning on September 1, 2015, a transportation network company and a participating driver shall maintain transportation network company insurance as provided in this section. Unless otherwise specified, the following requirements shall apply to transportation network company insurance during the engaged stage and during the passengers on board stage:

(a) Primary liability coverage in the amount of at least one million dollars for death, personal injury, and property damage; and

(b) Uninsured and underinsured motorist coverage for both the driver and passengers in the amounts required by the Uninsured and Underinsured Motorist Insurance Coverage Act.

(2) The requirements for the coverage required by this section may be satisfied by any of the following:

(a) Transportation network company insurance maintained by a participating driver;

(b) Transportation network company insurance maintained by a transportation network company; or

(c) Any combination of subdivisions (2)(a) and (b) of this section.

(3) The insurer providing transportation network company insurance under this section shall have the duty to defend and indemnify the insured.

(4) An insurance policy required under sections 75-332 to 75-341 shall be placed with an authorized Nebraska insurer or with a surplus-lines insurer pursuant to Chapter 44.

**Source:** Laws 2015, LB629, § 12.

## Cross References

Uninsured and Underinsured Motorist Insurance Coverage Act, see section 44-6401.

**75-334 Transportation network company insurance during application open stage; requirements.**

(1) Beginning on September 1, 2015, the following requirements shall apply to transportation network company insurance during the application open stage:

(a) Transportation network company insurance shall be primary and in the amount of at least twenty-five thousand dollars for death and personal injury per person, fifty thousand dollars for death and personal injury per incident, and twenty-five thousand dollars for property damage; and

(b) Uninsured motorist coverage pursuant to the Uninsured and Underinsured Motorist Insurance Coverage Act.

(2) The requirements for the coverage required by this section may be satisfied by any of the following:

(a) Transportation network company insurance maintained by a participating driver;

(b) Transportation network company insurance maintained by a transportation network company; or

(c) Any combination of subdivisions (2)(a) and (b) of this section.

(3) The insurer providing transportation network company insurance under this section shall have the duty to defend and indemnify the insured.

**Source:** Laws 2015, LB629, § 13.

## Cross References

Uninsured and Underinsured Motorist Insurance Coverage Act, see section 44-6401.

**75-335 Coverage of insurance; certificate of insurance; filing required.**

(1) Coverage under a transportation network company insurance policy shall not be dependent on a personal automobile insurance policy first denying a claim nor shall a personal automobile insurance policy, including a personal liability umbrella policy, be required to first deny a claim.

(2) When transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of sections 75-332 to 75-341 has lapsed or ceased to exist, the transportation network company shall provide the coverage required by sections 75-332 to 75-341 beginning with the first dollar of a claim.

(3) For transportation network company insurance maintained by a transportation network company to meet the requirements of sections 75-332 to 75-341, a certificate of insurance shall be filed with the commission specifying that on cancellation or nonrenewal of the transportation network company insurance, the insurer must send written notice of the cancellation or nonrenewal to the commission at least thirty days before the effective date of the cancellation or nonrenewal.

**Source:** Laws 2015, LB629, § 14.

**75-336 Liability; certain payments; how treated.**

(1) Sections 75-323 to 75-343 shall not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

(2) In the event of a loss involving a personal vehicle used in connection with a transportation network company and if such personal vehicle is subject to a lien, the transportation network company insurance carrier shall make payment for a claim covered under collision physical damage coverage or comprehensive physical damage coverage directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

**Source:** Laws 2015, LB629, § 15.

**75-337 Owner of personal vehicle; duty.**

The owner of any personal vehicle used in connection with a transportation network company shall have the duty to maintain collision physical damage coverage and comprehensive physical damage coverage for transportation network company activity if the vehicle is required to carry such coverage due to a contractual obligation.

**Source:** Laws 2015, LB629, § 16.

**75-338 Sections; how construed.**

Nothing in sections 75-323 to 75-343 shall be construed to require a private passenger automobile insurance policy to provide primary or excess coverage during the period of time from the moment a participating driver logs on to a transportation network company's online-enabled application or platform until the driver logs off the online-enabled application or platform or the passenger exits the personal vehicle, whichever is later.

**Source:** Laws 2015, LB629, § 17.

**75-339 Personal automobile insurer; policy, amendment, or endorsement; contents.**

Notwithstanding any other law, a personal automobile insurer may, at its discretion, offer an automobile insurance policy, or an amendment or endorsement to an existing policy, that covers a private passenger motor vehicle, station wagon type vehicle, sport utility vehicle, or similar type of motor vehicle with a passenger capacity of eight persons or less, including the driver, while used in connection with a transportation network company's online-enabled application or platform only if the policy expressly provides for the coverage during all or the defined portion of the time periods specified in sections 75-333 and 75-334, with or without a separate charge, or the policy contains an amendment or an endorsement to provide that coverage, for which a separately stated premium may be charged. The policy, amendment, or endorsement may include, but not be limited to:

- (1) Comprehensive physical damage coverage;
- (2) Collision physical damage coverage;
- (3) Liability coverage for bodily injury and property damage;
- (4) Medical payments coverage; and

(5) Uninsured and underinsured motorist coverage.

**Source:** Laws 2015, LB629, § 18.

**75-340 Cooperation with insurers; maintenance of records.**

(1) In a claims coverage investigation, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred that involved a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform in the twenty-four-hour period preceding the accident.

(2) All records, including electronic records, showing the time when a driver has logged in as active or logged out as inactive on the transportation network company's online-enabled application or platform, and any data or reports with information about the personal vehicle's involvement in a motor vehicle accident, that are maintained by the transportation network company shall be maintained for a minimum of five years after the date the loss is reported to the transportation network company.

**Source:** Laws 2015, LB629, § 19.

**75-341 Participating driver; proof of insurance coverage.**

A participating driver shall carry proof of transportation network company insurance coverage with him or her at all times during his or her use of a vehicle in connection with a transportation network company's online-enabled application or platform. In the event of an accident, a participating driver shall, upon request, provide this insurance coverage information to any other party involved in the accident and to a law enforcement officer.

**Source:** Laws 2015, LB629, § 20.

**75-342 Certain services; specific authorization from commission required.**

No transportation network company or participating driver shall provide transportation for any person under contract with the Department of Health and Human Services or any contractors of the Department of Health and Human Services without specific authorization from the commission. In order to receive such authorization, the transportation network company or participating driver shall demonstrate that such service is or will be required by the present or future public convenience and necessity.

**Source:** Laws 2015, LB629, § 21.

**75-343 Report; contents.**

The commission shall electronically provide the Legislature with an annual report before December 31 of each year on the status of the implementation of sections 75-323 to 75-342. The report shall describe (1) the number of permits issued pursuant to section 75-324, (2) a description of any revocation proceedings involving permits issued under sections 75-323 to 75-342, (3) the number of rides provided by taxicab carriers relative to historical numbers, (4) the number of taxicabs operated by taxicab carriers relative to historical numbers, (5) the number of drivers either employed or contracted by taxicab carriers relative to historical numbers, (6) the number of taxicab carriers authorized by

the commission relative to historical numbers, and (7) any other information in its possession that the commission believes will assist the Legislature in evaluating the effectiveness of sections 75-323 to 75-342. The report shall also address the question of the need for further legislation to achieve the purposes of sections 75-323 to 75-342.

**Source:** Laws 2015, LB629, § 22.

(c) TRACTOR ENGINE TESTS

**75-344 Transferred to section 2-2709.**

**75-345 Transferred to section 2-2710.**

**75-346 Transferred to section 2-2711.**

**75-347 Transferred to section 2-2712.**

(d) INTERSTATE MOTOR CARRIERS

**75-348 Repealed. Laws 2009, LB 331, § 28.**

**75-349 Repealed. Laws 2009, LB 331, § 28.**

**75-350 Repealed. Laws 2009, LB 331, § 28.**

**75-351 Repealed. Laws 2009, LB 331, § 28.**

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

**75-353 Repealed. Laws 2009, LB 331, § 28.**

**75-354 Repealed. Laws 2009, LB 331, § 28.**

**75-355 Repealed. Laws 2009, LB 331, § 28.**

**75-356 Repealed. Laws 1991, LB 337, § 12.**

**75-357 Repealed. Laws 1991, LB 337, § 12.**

**75-358 Repealed. Laws 2009, LB 331, § 28.**

(e) SAFETY REGULATIONS

**75-359 Repealed. Laws 1987, LB 4, § 1.**

**75-360 Repealed. Laws 1987, LB 4, § 1.**

**75-361 Repealed. Laws 1987, LB 4, § 1.**

**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)(a) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(i) That:

(A) Is traveling in the state in which the vehicle is registered or another state;

(B) Is operated by:

(I) A farm owner or operator;

(II) A ranch owner or operator; or

(III) An employee or family member of an individual specified in subdivision (8)(a)(i)(B)(I) or (8)(a)(i)(B)(II) of this section;

(C) Is transporting to or from a farm or ranch:

(I) Agricultural commodities;

(II) Livestock; or

(III) Machinery or supplies;

(D) Except as provided in subdivision (8)(b) of this section, is not used in the operations of a for-hire motor carrier; and

(E) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(ii) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(A) Less than twenty-six thousand one pounds; or

(B) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(b) Covered farm vehicle includes a motor vehicle that meets the requirements of subdivision (8)(a) of this section, except for subdivision (8)(a)(i)(D) of this section, and:

(i) Is operated pursuant to a crop share farm lease agreement;

(ii) Is owned by a tenant with respect to that agreement; and

(iii) Is transporting the landlord's portion of the crops under that agreement.

(c) Covered farm vehicle does not include:

(i) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(ii) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the

federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F;

(9) 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;

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

(11) 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;

(12) 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;

(13) 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;

(14) 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;

(15) 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;

(16) 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;
- (17) 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;
- (18) Fertilizer and agricultural chemical application and distribution equipment means:
- (a) Self-propelled or towed equipment, designed and used exclusively to apply commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products to agricultural soil and crops; or
  - (b) Towed equipment designed and used exclusively to carry commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products for use on agricultural soil and crops, which are equipped with implement or floatation tires;
- (19) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;
- (20) 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;
- (21) Gross combination weight rating means the greater of (a) a value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard certification label required by the National Highway Traffic Safety Administration, or (b) the sum of the gross vehicle weight ratings or the gross vehicle weights of the power unit and the towed unit or units, or any combination thereof, that produces the highest value. Gross combination weight rating does not apply to a commercial motor vehicle if the power unit is not towing another vehicle;
- (22) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;
- (23) 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;
- (24) 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;
- (25) 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;

(26) 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;

(27) 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;

(28) 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;

(29) 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;

(30) 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;

(31) 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;

(32) 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;

(33) 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;

(34) 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, 392.9a, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(35) 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;

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

(37) Planting and harvesting season means the period beginning on January 1 up to and including December 31 of each calendar year;

(38) 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 75-362 to 75-369.07 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;

(39) 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;

(40) 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

(41) 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; Laws 2010, LB725, § 2; Laws 2010, LB805, § 12; Laws 2014, LB983, § 60; Laws 2016, LB311, § 23.

**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, 2018, 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 386 - RULES OF PRACTICE FOR FMCSA PROCEEDINGS;

(d) Part 387 - MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS;

(e) Part 390 - FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL;

(f) Part 391 - QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS;

(g) Part 392 - DRIVING OF COMMERCIAL MOTOR VEHICLES;

(h) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;

(i) Part 395 - HOURS OF SERVICE OF DRIVERS;

(j) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE;

(k) Part 397 - TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES; and

(l) 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. 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) The following parts and subparts of 49 C.F.R. chapter III shall not apply to the operation of covered farm vehicles:

- (a) Part 382 - CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;
- (b) Part 391, subpart E - Physical Qualifications and Examinations;
- (c) Part 395 - HOURS OF SERVICE OF DRIVERS; and
- (d) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE.

(7) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION and Part 396 - INSPECTION, REPAIR, AND MAINTENANCE shall not apply to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(8) 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.

(9)(a) 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:

- (i) More than twelve hours following ten consecutive hours off duty; or
- (ii) For any period after having been on duty sixteen hours following ten consecutive hours off duty.

(b) 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.

(10) Part 395 - HOURS OF SERVICE OF DRIVERS, as adopted in subsections (3) and (9) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes during planting and harvesting season when:

- (a) The transportation of such agricultural commodities is from the source of the commodities to a location within a one-hundred-fifty-air-mile radius of the source of the commodities;

(b) The transportation of such farm supplies is from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used which is within a one-hundred-fifty-air-mile radius of the wholesale or retail distribution point; or

(c) The transportation of such farm supplies is from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies which is within a one-hundred-fifty-air-mile radius of the wholesale distribution point.

(11) 49 C.F.R. 390.21 - Marking of self-propelled CMVs and intermodal equipment shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(12) 49 C.F.R. 392.9a - Operating authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(13) 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; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15; Laws 2010, LB725, § 3; Laws 2010, LB805, § 13; Laws 2011, LB178, § 21; Laws 2011, LB212, § 7; Laws 2012, LB751, § 49; Laws 2013, LB35, § 6; Laws 2014, LB983, § 61; Laws 2015, LB313, § 7; Laws 2016, LB929, § 11; Laws 2017, LB263, § 88; Laws 2018, LB909, § 121.  
Effective date April 12, 2018.

**Cross References**

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

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

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, 2018, are adopted as part of Nebraska law and 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:

(1) 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;

(2) Part 107 - HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart G - Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171 - GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;

(4) Part 172 - HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173 - SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177 - CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178 - SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180 - CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

**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; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16; Laws 2010, LB805, § 14; Laws 2011, LB178, § 22; Laws 2011, LB212, § 8; Laws 2012, LB751, § 50; Laws 2013, LB35, § 7; Laws 2014, LB983, § 62; Laws 2015, LB313, § 8; Laws 2016, LB929, § 12; Laws 2017, LB263, § 89; Laws 2018, LB909, § 122.

Effective date April 12, 2018.

**75-365 Definitions; applicability; report; requirements.**

(1) Definitions contained in the regulations referred to in sections 75-363 and 75-364 shall only apply to such regulations.

(2) When the regulations referred to in sections 75-363 and 75-364 require that any person submit a report to the United States Department of Transportation or any other federal agency, that person shall also submit a copy of the report to the Nebraska State Patrol.

**Source:** Laws 1986, LB 301, § 3.

**75-366 Enforcement powers.**

For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, 2018, and federal hazardous materials regulations, as such regulations existed on January 1, 2018, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to

Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

**Source:** Laws 1986, LB 301, § 4; Laws 1987, LB 538, § 2; Laws 1990, LB 980, § 31; Laws 1995, LB 424, § 48; Laws 1996, LB 1218, § 60; Laws 2002, LB 93, § 18; Laws 2003, LB 480, § 4; Laws 2012, LB751, § 51; Laws 2013, LB35, § 8; Laws 2014, LB983, § 63; Laws 2015, LB313, § 9; Laws 2016, LB929, § 13; Laws 2017, LB263, § 90; Laws 2018, LB909, § 123.  
Effective date April 12, 2018.

**75-367 Violations; penalty.**

Any person who violates any of the provisions adopted under section 75-363 or 75-364 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1986, LB 301, § 5; Laws 1994, LB 414, § 79.

**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 75-392 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 eight 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. 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 fifteen thousand seven hundred twenty-seven dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subdivision (2)(e) 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 or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be in an amount not less than three thousand thirty-four dollars for a first violation and not less than six thousand sixty-eight 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 or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be not less than five thousand four hundred seventy-nine dollars but not more than thirty thousand three hundred thirty-seven 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; Laws 2009, LB331, § 17; Laws 2014, LB983, § 64; Laws 2017, LB263, § 91; Laws 2018, LB909, § 124.

Effective date April 12, 2018.

An "interstate motor carrier" within the meaning of this section is a carrier subject to federal jurisdiction pursuant to the federal motor carrier safety regulations, as delimited by 49 U.S.C. 13501 et seq., and an "intrastate motor carrier" is a

carrier not subject to that federal jurisdiction. *Caspers Constr. Co. v. Nebraska State Patrol*, 270 Neb. 205, 700 N.W.2d 587 (2005).

#### **75-369.04 Civil penalty; order; contents; collection.**

Any order issued by the Superintendent of Law Enforcement and Public Safety under section 75-369.03 shall include at least (1) the date of the order, (2) a description of each act or omission upon which the violation is based, (3) the manner in which and the place where the respondent may pay the civil penalty or request a hearing within fifteen business days after receipt of the order, and (4) a notice that if the respondent fails to respond to the order within fifteen business days after receipt of the order, the order shall automatically become final and the civil penalty may be collected by civil action in the district court of Lancaster County.

**Source:** Laws 1994, LB 358, § 4.

#### **75-369.05 Notice or order; service.**

Any notice or order provided for in sections 75-369.01 to 75-369.07 shall be personally served on the respondent or on the person authorized by the respondent to receive notices and orders or shall be sent by registered mail or certified mail, return receipt requested, to the last-known address of the respondent or the person authorized to receive such notices and orders. A copy of the notice or order shall be filed in the records of the carrier enforcement division of the Nebraska State Patrol.

**Source:** Laws 1994, LB 358, § 5.

#### **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.

#### **75-369.07 Summary order; hearing; procedure; final order; appeal.**

(1) If no hearing is requested and none is ordered by the Superintendent of Law Enforcement and Public Safety, the summary order shall automatically become a final order after fifteen business days after receipt of the order pursuant to section 75-369.05.

(2) If a hearing is requested or ordered, the superintendent shall appoint as hearing officer an attorney licensed to practice law in Nebraska. Every hearing pursuant to sections 75-369.01 to 75-369.07 shall be conducted in accordance with the Administrative Procedure Act.

(3) Every hearing in an administrative proceeding under this section shall be public unless the hearing officer grants a request joined in by all the respondents that the hearing be conducted privately.

(4) Upon agreement by all the parties any time before or during the hearing under this section, the hearing officer may compromise, mitigate, or aggravate any civil penalty. In determining the amount of the civil penalty, the hearing officer shall consider the appropriateness of the civil penalty in light of the gravity of the violation and the good faith of such violator in attempting to achieve compliance after notification of the violation.

(5) The hearing officer, within ten days after the conclusion of the hearing, shall make written findings of fact and conclusions of law to the superintendent. Such findings of fact and conclusions of law shall not be binding upon the superintendent.

(6) If a hearing is requested or ordered, the superintendent, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(7) No final order or order after hearing may be returned by the superintendent without (a) appropriate notice to all interested persons, (b) opportunity for hearing to all interested persons, and (c) entry of written findings of fact and conclusions of law. Any order or decision of the superintendent may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1994, LB 358, § 7.

**Cross References**

**Administrative Procedure Act**, see section 84-920.

(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.

## (g) INTERSTATE OPERATING AUTHORITY AGREEMENT ACT

**75-372 Repealed. Laws 1993, LB 413, § 9.**

**75-373 Repealed. Laws 1993, LB 413, § 9.**

**75-374 Repealed. Laws 1993, LB 413, § 9.**

**75-375 Repealed. Laws 1993, LB 413, § 9.**

**75-376 Repealed. Laws 1993, LB 413, § 9.**

**75-377 Repealed. Laws 1993, LB 413, § 9.**

**75-378 Repealed. Laws 1993, LB 413, § 9.**

**75-379 Repealed. Laws 1993, LB 413, § 9.**

**75-380 Repealed. Laws 1993, LB 413, § 9.**

## (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

**75-385 Division of Motor Carrier Services; established; Administrator of Motor Carrier Services.**

The Division of Motor Carrier Services is established within the Department of Motor Vehicles and shall be headed by the Administrator of Motor Carrier Services. The administrator shall administer the affairs of the division.

**Source:** Laws 1996, LB 1218, § 1; Laws 2018, LB177, § 15.  
Effective date July 19, 2018.

**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 unified carrier registration plan and agreement pursuant to sections 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; Laws 2009, LB331, § 18.

**Cross References**

**International Fuel Tax Agreement Act**, see section 66-1401.  
**International Registration Plan Act**, see section 60-3,192.

**75-387 Repealed. Laws 2002, LB 93, § 27.**

**75-388 Repealed. Laws 2002, LB 93, § 27.**

**75-389 Rules and regulations.**

The Division of Motor Carrier Services shall adopt and promulgate rules and regulations necessary to carry out its powers and duties.

**Source:** Laws 1996, LB 1218, § 5.

**75-390 Repealed. Laws 2009, LB 331, § 28.**

(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. 14504a, as such section existed on January 1, 2018.

**Source:** Laws 2007, LB358, § 1; Laws 2014, LB776, § 7; Laws 2016, LB929, § 14; Laws 2017, LB263, § 92; Laws 2018, LB909, § 125.

Effective date April 12, 2018.

##### **75-393 Unified carrier registration plan and agreement; director; powers.**

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2018, and may file on behalf of this state

the plan required by such plan and agreement for enforcement of the act in this state.

**Source:** Laws 2007, LB358, § 2; Laws 2009, LB331, § 19; Laws 2011, LB212, § 9; Laws 2012, LB751, § 52; Laws 2013, LB35, § 9; Laws 2014, LB776, § 8; Laws 2015, LB313, § 10; Laws 2016, LB929, § 15; Laws 2017, LB263, § 93; Laws 2018, LB909, § 126.

Effective date April 12, 2018.

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

(1) 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) 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; Laws 2009, LB331, § 20.

**75-395 Repealed. Laws 2009, LB 331, § 28.**

**75-396 Rules and regulations.**

The director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

**Source:** Laws 2007, LB358, § 5; Laws 2009, LB331, § 21.

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

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; Laws 2009, LB331, § 22.

**75-398 Violations; penalty.**

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; Laws 2009, LB331, § 23.

**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 4  
RAIL CARRIERS**

- Section
- 75-401. Public Service Commission; jurisdiction; railroad safety; enforcement.
- 75-401.01. Railroads; discontinue agency service or close station; hearing.
- 75-402. Terms, defined.
- 75-403. Railroads; violation of orders of commission; civil liability; defenses precluded.
- 75-404. Repealed. Laws 1994, LB 414, § 137.
- 75-405. Reciprocal demurrage; annual agreement.
- 75-406. Repealed. Laws 1979, LB 255, § 1.
- 75-407. Repealed. Laws 1979, LB 255, § 1.
- 75-408. Repealed. Laws 1979, LB 255, § 1.
- 75-409. Repealed. Laws 1994, LB 414, § 137.
- 75-410. Transferred to section 74-1332.
- 75-411. Transferred to section 74-1333.
- 75-412. Transferred to section 74-1334.
- 75-413. Transferred to section 74-1335.
- 75-414. Transferred to section 74-1336.
- 75-415. Transferred to section 74-1337.
- 75-416. Transferred to section 74-1338.
- 75-417. Transferred to section 74-1339.
- 75-418. Transferred to section 74-1340.
- 75-419. Employees; hours of labor.
- 75-420. Employees; hours of labor; violation; penalty.
- 75-421. Repealed. Laws 1994, LB 414, § 137.
- 75-422. Repealed. Laws 1965, c. 449, § 3.
- 75-423. Repealed. Laws 1965, c. 449, § 3.
- 75-424. Repealed. Laws 1994, LB 414, § 137.
- 75-425. Repealed. Laws 1994, LB 414, § 137.
- 75-426. Accidents; reports; filing; investigation; violation; penalty.
- 75-427. Transferred to section 74-1331.
- 75-428. Intersections; transfer facilities; duty to provide; violation; penalty.
- 75-429. Switch stand lights and signals; operation; violation; penalty.
- 75-430. Railroad signals; interference with view; authority of commission.
- 75-431. Repealed. Laws 1994, LB 414, § 137.
- 75-432. Repealed. Laws 1994, LB 414, § 137.
- 75-433. Repealed. Laws 1994, LB 414, § 137.
- 75-434. Repealed. Laws 1994, LB 414, § 137.
- 75-435. Repealed. Laws 1994, LB 414, § 137.
- 75-436. Repealed. Laws 1994, LB 414, § 137.
- 75-437. Repealed. Laws 1994, LB 414, § 137.
- 75-438. Repealed. Laws 1994, LB 414, § 137.
- 75-439. Repealed. Laws 1994, LB 414, § 137.
- 75-440. Repealed. Laws 1994, LB 414, § 137.



**75-401 Public Service Commission; jurisdiction; railroad safety; enforcement.**

The commission shall exercise jurisdiction over the service, facilities, and equipment of all railroad carriers in this state. This jurisdiction shall extend and apply to the general public, as well as those having business relations with the railroad carrier. Sections 75-401 to 75-430 shall not be construed as giving the commission jurisdiction or control over the relations between any railroad carrier and its employees, or its employees' order, union, or other bargaining agent, either contractual or otherwise, except as provided in sections 75-419 to 75-426.

The commission shall enforce the standards of railroad safety set forth in 49 C.F.R. parts 213, 215, 223, 229, 231, and 232.

**Source:** Laws 1963, c. 425, art. IV, § 1, p. 1398; Laws 1994, LB 414, § 82.

Powers of Railway Commission hereunder are not limited by statute authorizing enforcement by injunction in absence of specific legislation to that effect. Nebraska State Railway Commission v. Chicago & N.W. Ry. Co., 187 Neb. 369, 191 N.W.2d 438 (1971).

**75-401.01 Railroads; discontinue agency service or close station; hearing.**

In all applications before the commission to discontinue agency service or to close a railroad station or the substitution therefor of other methods of transacting business with patrons of the carrier, which applications have been protested, the commission shall conduct a hearing within the city or village served by the station sought to be affected at a suitable place meeting the convenience of the public to appear at such hearing or at the county seat of the county in which the station sought to be affected is located. If more than one city or village is included in the application, the hearing shall be held at as centrally located a meeting place as practicable to the cities or villages involved or at the county seat of the most centrally located city or village involved. If the stations involved are situated in more than one county and when the stations involved are more than thirty miles from the point where the hearing is initially held, a hearing shall be held in the seat of each such county unless waived by the affected protestants. When more than one hearing is required under this section, the commission shall designate the first hearing for the taking of testimony of the applicant and such evidence as any protestant may wish to offer. Subsequent hearings shall be for the purpose of taking the testimony of other protestants.

**Source:** Laws 1967, c. 472, § 1, p. 1467; Laws 1994, LB 414, § 83.

**75-402 Terms, defined.**

As used in sections 75-401 to 75-430, and in all rules and regulations prescribed by the commission, unless the context otherwise requires:

- (1) Railroad carrier shall mean any common carrier engaged in the carrying of freight or passengers over any line of railroad, or part thereof, within the State of Nebraska; and
- (2) Railroad shall mean any line of railroad track, or part thereof, located within the State of Nebraska.

**Source:** Laws 1963, c. 425, art. IV, § 2, p. 1398; Laws 1994, LB 414, § 84.

**75-403 Railroads; violation of orders of commission; civil liability; defenses precluded.**

Any railroad carrier shall be liable for any damage or injury that shall be caused or contributed to by a violation of any commission order, issued after due notice and hearing, relating to the efficiency, sufficiency, and safety of the service, facilities, or equipment furnished by such carrier. In such case, the railroad carrier shall not be entitled to the defenses of assumption of risk or contributory negligence.

**Source:** Laws 1963, c. 425, art. IV, § 3, p. 1399; Laws 1965, c. 446, § 5, p. 1418.

**75-404 Repealed. Laws 1994, LB 414, § 137.**

**75-405 Reciprocal demurrage; annual agreement.**

Every railroad carrier which operates lines within this state shall make an annual agreement with each shipper that receives or sends ten or more cars annually which provides the terms under which reciprocal demurrage charges shall be made on the part of the railroad carrier or shipper. Such terms shall be equal for all shippers. Any agreement made under this section shall control the relation between the parties thereto, the provisions of sections 75-401 to 75-430 to the contrary notwithstanding. Monthly settlements may be entered into, but all credits due a shipper for the current month shall be carried to the shipper's credit for the succeeding month, except that at the termination of the agreement, any credits due the shipper shall be eliminated.

**Source:** Laws 1963, c. 425, art. IV, § 5, p. 1399; Laws 1994, LB 414, § 85.

**75-406 Repealed. Laws 1979, LB 255, § 1.**

**75-407 Repealed. Laws 1979, LB 255, § 1.**

**75-408 Repealed. Laws 1979, LB 255, § 1.**

**75-409 Repealed. Laws 1994, LB 414, § 137.**

**75-410 Transferred to section 74-1332.**

**75-411 Transferred to section 74-1333.**

**75-412 Transferred to section 74-1334.**

**75-413 Transferred to section 74-1335.**

**75-414 Transferred to section 74-1336.**

**75-415 Transferred to section 74-1337.**

**75-416 Transferred to section 74-1338.**

**75-417 Transferred to section 74-1339.**

**75-418 Transferred to section 74-1340.**

**75-419 Employees; hours of labor.**

It shall be unlawful for any railroad carrier, its officers or agents, to require or permit any employee to be or remain on duty for a longer period than sixteen consecutive hours. For the purposes of this section, employees shall mean any person actually engaged in or connected with the movements of any

train. Whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such employee, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; *Provided*, no operator, train dispatcher, or other employee who by the use of the telegraph, or telephone, dispatches reports, or transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated day and night nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in cases of emergency, when the employees named in this proviso may be permitted to be or remain on duty for four additional hours in a twenty-four-hour period and not to exceed three days in any one week. The commission may, after full hearing in a particular case, and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this section.

**Source:** Laws 1963, c. 425, art. IV, § 19, p. 1405.

**75-420 Employees; hours of labor; violation; penalty.**

Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of section 75-419, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation thereof, to be recovered in a suit or suits to be brought by the county attorney of the county in the state having jurisdiction in the locality where the violation shall have been committed. It shall be the duty of such county attorney to bring such suits upon satisfactory information being lodged with him, but no such suit shall be brought after the expiration of one year from the date of such violations as may come to his knowledge. In all prosecutions under this section the common carrier shall be deemed to have had knowledge of all acts of its officers and agents. The provisions of sections 75-419 and 75-420 shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officers and agents in charge of such employee at the time such employee left a terminal, and which could not have been foreseen; nor to the crews of wrecking or relief trains.

**Source:** Laws 1963, c. 425, art. IV, § 20, p. 1405.

**75-421 Repealed. Laws 1994, LB 414, § 137.**

**75-422 Repealed. Laws 1965, c. 449, § 3.**

**75-423 Repealed. Laws 1965, c. 449, § 3.**

**75-424 Repealed. Laws 1994, LB 414, § 137.**

**75-425 Repealed. Laws 1994, LB 414, § 137.**

**75-426 Accidents; reports; filing; investigation; violation; penalty.**

Upon the occurrence of any serious personal injury or loss of life to persons other than railroad employees resulting from an accident at a railroad crossing or from an accident involving an explosion, fire, or release of noxious fumes occurring upon any railroad within the State of Nebraska, the corporation which operates the railroad upon which the accident occurred shall report such accident in writing or by telephone to the commission within twenty-four hours of the time such accident occurred. The commission shall promptly investigate any such accident and a report shall be made a part of the commission's official files. The corporation which operates the railroad shall also furnish to the commission a copy of the same report that it is required to furnish to the Federal Railroad Administration. Neither of such reports shall be evidence or referred to in any case in any court. Any railroad carrier violating any of the provisions of this section shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1963, c. 425, art. IV, § 26, p. 1408; Laws 1980, LB 203, § 1.

**75-427 Transferred to section 74-1331.**

**75-428 Intersections; transfer facilities; duty to provide; violation; penalty.**

Each owner of a railroad may cross, intersect, join, and unite its railroad with any other railroad at any point on its route and upon the grounds of the owner of such other railroad with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connection. Each owner of a railroad which is intersected by any new railroad shall unite with the owners of such new railroad to form such intersections and connections and grant the facilities specified in this section. If the two owners cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections, they shall be ascertained and determined by the commission.

All owners of railroads in this state, at all points of connection, intersection, or crossing at grade of different railroads, where it is practicable, shall provide reasonable, ample, and equal facilities by track connection, passenger platforms, and otherwise, for transferring cars, passengers, and property between their respective roads without unreasonable delay. At any place where the tracks of the two owners are within five hundred feet apart, whether on the same grade or not, when it is practicable and deemed reasonably necessary, the commission, upon application of any interested person, may require such track connection. No owner shall discriminate in its rates or charges between such connecting lines or on freight coming over them, but no such owner shall be required to furnish to another owner its tracks, equipment, or terminal facilities without reasonable compensation. Each of the connecting lines shall pay its proportionate share for the building and maintenance of such track and switches as may be necessary to furnish the transfer facilities required by this section. In case they cannot agree on the amount which each line shall pay, the amount shall, upon application by either party, be determined and adjusted by the commission. When the commission has refused to require track connection as requested by the applicant, if the applicant agrees in writing to pay the cost of making and maintaining the track connection and offers adequate security, the commission shall order such track connection to be made by such owners whether the commission deems the track connection practicable or reasonably necessary or not. The railroad tracks, at the point where the connection is to be made, shall run within one mile of the corporate limits of any city or village.

Any owner of a railroad who fails or neglects to comply with the order within the time fixed shall be guilty of a Class II misdemeanor.

**Source:** Laws 1963, c. 425, art. IV, § 28, p. 1408; Laws 1977, LB 39, § 202; Laws 1994, LB 414, § 94.

**75-429 Switch stand lights and signals; operation; violation; penalty.**

Each operator of any railroad in this state shall equip with proper lights all switch stands to each switch leading from all main tracks of such road on which trains are generally operated at night except lines fully equipped with automatic block signals. Lights or other signals may be ordered by the commission to be installed on switch stands to other switches, including crossover switches and lead track switches in yards adjacent to main tracks, when they are found reasonably necessary to safe operation after hearing held upon complaint or upon the commission's own motion. The lights upon such switch stands shall be in good condition constantly and shall be lighted and kept burning between sundown and sunrise and at such other times when, by reason of excessively foggy weather, the condition of such lights or signals would render operations unsafe both for the employees of such railroad and for the general public. Signals with reflex lenses may be substituted for lighted lamps under regulations prescribed by the commission and subject to the jurisdiction of the commission to order the removal of them, after complaint and hearing, if the signals with reflex lenses are found to be unsafe.

Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class V misdemeanor.

**Source:** Laws 1963, c. 425, art. IV, § 29, p. 1410; Laws 1977, LB 39, § 203; Laws 1994, LB 414, § 95.

**75-430 Railroad signals; interference with view; authority of commission.**

It shall be unlawful to locate, maintain, or allow to remain any light at any place within this state in such a place or manner that the light interferes with the view of any railroad signal to an extent which causes danger in the operation of trains.

Whenever any light has been located, maintained, or allowed to remain in such a place or manner that it interferes with the view of any railroad signal to an extent which causes danger in the operation of trains, the commission shall, upon its own motion or upon the complaint of an affected owner of a railroad or other interested party, set the complaint for hearing and issue a formal order to enforce compliance with this section if it finds that the light does interfere to such an extent.

**Source:** Laws 1963, c. 425, art. IV, § 30, p. 1411; Laws 1994, LB 414, § 96.

**75-431 Repealed. Laws 1994, LB 414, § 137.**

**75-432 Repealed. Laws 1994, LB 414, § 137.**

**75-433 Repealed. Laws 1994, LB 414, § 137.**

**75-434 Repealed. Laws 1994, LB 414, § 137.**

**75-435 Repealed. Laws 1994, LB 414, § 137.**

**75-436 Repealed. Laws 1994, LB 414, § 137.**

**75-437 Repealed. Laws 1994, LB 414, § 137.**

**75-438 Repealed. Laws 1994, LB 414, § 137.**

**75-439 Repealed. Laws 1994, LB 414, § 137.**

**75-440 Repealed. Laws 1994, LB 414, § 137.**

## ARTICLE 5

### PIPELINE CARRIERS

#### Section

- 75-501. Common carrier, declaration; commission jurisdiction; rules and regulations; validity.  
 75-501.01. Repealed. Laws 1994, LB 414, § 137.  
 75-502. Pipeline carriers; powers.  
 75-503. Pipeline carriers; tapping pipeline; commission may authorize.

#### **75-501 Common carrier, declaration; commission jurisdiction; rules and regulations; validity.**

Any person who transports, transmits, conveys, or stores liquid or gas by pipeline for hire in Nebraska intrastate commerce shall be a common carrier subject to commission regulation. The commission shall adopt, promulgate, and enforce reasonable rules and regulations establishing minimum state safety standards for the design, construction, maintenance, and operation of pipelines which transport liquefied petroleum gas or anhydrous ammonia in intrastate commerce by common carriers. Such rules and regulations, and the interpretations thereof, shall conform with the rules, regulations, and interpretations of the appropriate federal agencies with authority to regulate pipeline common carriers in interstate commerce. Any person may determine the validity of any such rule or regulation in such manner as provided by law.

**Source:** Laws 1963, c. 425, art. V, § 1, p. 1416; Laws 1969, c. 608, § 1, p. 2474; Laws 1994, LB 414, § 97.

**75-501.01 Repealed. Laws 1994, LB 414, § 137.**

#### **75-502 Pipeline carriers; powers.**

Pipeline carriers which are declared common carriers under section 75-501, pipeline carriers approved under the Major Oil Pipeline Siting Act, and pipeline carriers for which the Governor approves a route under section 57-1503 may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

**Source:** Laws 1963, c. 425, art. V, § 2, p. 1416; Laws 1994, LB 414, § 98; Laws 2011, First Spec. Sess., LB1, § 20.

## Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

**75-503 Pipeline carriers; tapping pipeline; commission may authorize.**

Upon written application of any person who operates or proposes to operate any refinery in this state, after hearing, if in the judgment of the commission the public good shall require, the commission shall enter an order authorizing the tapping of any pipeline at or near any point where the refinery is established or is proposed to be established. In the order, the commission shall provide for the reimbursement of the owner of the pipeline for any expense incident to the tapping thereof for the purposes provided in this section.

**Source:** Laws 1963, c. 425, art. V, § 3, p. 1417; Laws 1994, LB 414, § 99.

**ARTICLE 6**

**TELEGRAPHS AND TELEPHONES**

## Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236 et seq.  
Telecommunications, generally, see Chapter 86.

## Section

75-601.	Repealed. Laws 1994, LB 414, § 137.
75-602.	Repealed. Laws 1994, LB 414, § 137.
75-603.	Repealed. Laws 1994, LB 414, § 137.
75-604.	Transferred to section 86-128.
75-605.	Transferred to section 86-130.
75-606.	Transferred to section 86-161.
75-607.	Transferred to section 86-131.
75-608.	Transferred to section 86-132.
75-609.	Transferred to section 86-140.
75-609.01.	Transferred to section 86-141.
75-610.	Transferred to section 86-162.
75-611.	Transferred to section 86-133.
75-612.	Transferred to section 86-135.
75-613.	Transferred to section 86-136.
75-614.	Transferred to section 86-137.
75-615.	Transferred to section 86-138.
75-616.	Transferred to section 86-156.
75-617.	Transferred to section 86-160.

**75-601 Repealed. Laws 1994, LB 414, § 137.**

**75-602 Repealed. Laws 1994, LB 414, § 137.**

**75-603 Repealed. Laws 1994, LB 414, § 137.**

**75-604 Transferred to section 86-128.**

**75-605 Transferred to section 86-130.**

**75-606 Transferred to section 86-161.**

**75-607 Transferred to section 86-131.**

**75-608 Transferred to section 86-132.**

**75-609 Transferred to section 86-140.**

**75-609.01 Transferred to section 86-141.**

**75-610 Transferred to section 86-162.**

**75-611 Transferred to section 86-133.**

**75-612 Transferred to section 86-135.**

**75-613 Transferred to section 86-136.**

**75-614 Transferred to section 86-137.**

**75-615 Transferred to section 86-138.**

**75-616 Transferred to section 86-156.**

**75-617 Transferred to section 86-160.**

## ARTICLE 7

### TRANSMISSION LINES

#### Section

- 75-701. Public Service Commission; jurisdiction denied.
- 75-702. Transmission lines; intersections between railroads and highways; jurisdiction of commission.
- 75-703. Intersections between railroads and highways; rules and regulations.
- 75-704. Intersections between railroads and highways; prohibited acts.
- 75-705. Intersections between railroads and highways; crossing; commission may prescribe changes; cost.
- 75-706. Intersections between railroads and highways; crossing of wires; clearance.
- 75-707. Intersections between railroads and highways; crossing of wires; regulation.
- 75-708. Wires; violation; penalty; enforcement.
- 75-709. Electric lines; clearance from other lines.
- 75-710. Electric line; construction or voltage increase; application required, when.
- 75-711. Application to construct line or increase voltage; notice; hearing.
- 75-712. Electric line paralleling or intersecting certain telephone lines; inductive interference; effect.
- 75-713. Construction near airports; application; when.
- 75-714. Construction near airports; application; notice; hearing; waiver; rules and regulations by Director of Aeronautics.
- 75-715. Construction near airports; notice of hearing; to whom; objections.
- 75-716. Division of Aeronautics; file list of airports with commission.
- 75-717. Construction near airports; hearing; order.
- 75-718. Transmission, telephone, or telegraph lines; commission may vacate side of highway, when.
- 75-719. Specified electrical transmission lines; construction requirements; applications; exceptions; line extension; delayed application; procedure.
- 75-720. Proposed construction; electrical lines; application, notice, or hearing; unnecessary; when.
- 75-721. Construction; operation; commission may regulate.
- 75-722. Procedure; appeal; provisions applicable.
- 75-723. Transmission, telephone, and telegraph lines; violations; penalty.
- 75-724. Lines in cities or villages; exempt.

**75-701 Public Service Commission; jurisdiction denied.**

The commission shall have no jurisdiction over the rates, tolls, rents, and charges of districts organized under sections 70-601 to 70-672.

**Source:** Laws 1963, c. 425, art. VII, § 1, p. 1422; Laws 1987, LB 28, § 1; Laws 1994, LB 414, § 113.

**75-702 Transmission lines; intersections between railroads and highways; jurisdiction of commission.**



The commission shall have general supervision over any and all wires for transmitting electric current, or any other wire whatsoever, which crosses under or over any railroad track in this state at public highway crossings.

**Source:** Laws 1963, c. 425, art. VII, § 2, p. 1422; Laws 1994, LB 414, § 114.

**75-703 Intersections between railroads and highways; rules and regulations.**

The commission shall adopt and promulgate rules and regulations prescribing the manner in which the wires specified in section 75-702 will cross such railroad tracks in this state at public highway crossings.

**Source:** Laws 1963, c. 425, art. VII, § 3, p. 1422; Laws 1994, LB 414, § 115.

**75-704 Intersections between railroads and highways; prohibited acts.**

It shall be unlawful for any person to place any wire across any railroad track in this state at public highway crossings except in such manner as may be prescribed by the commission as provided in section 75-703.

**Source:** Laws 1963, c. 425, art. VII, § 4, p. 1422; Laws 1994, LB 414, § 116.

**75-705 Intersections between railroads and highways; crossing; commission may prescribe changes; cost.**

The commission shall, either by personal examination or otherwise, obtain information where the railroad track at public highway crossings is crossed by wires strung over the track contrary to or not in compliance with the rules prescribed by the commission, as contemplated by section 75-703, and shall order such change to be made by the person who owns or operates such wires as it may deem necessary to make the wires comply with such rules and within such reasonable time as it may prescribe. If the owner of the railroad and the other interested person are unable to agree as to which party shall bear the cost of any part of any such changes, the commission shall decide and determine which party shall bear the cost of such changes at public highway crossings.

**Source:** Laws 1963, c. 425, art. VII, § 5, p. 1422; Laws 1994, LB 414, § 117.

**75-706 Intersections between railroads and highways; crossing of wires; clearance.**

If any wire crosses over railroad track, in no case shall the commission prescribe a less clearance than twenty-five feet above the rails under the most unfavorable conditions of temperature and loading for all wires except electric wires for trolley cars, and such wires shall not be placed at a height of less than twenty-two feet from the top of the rails.

**Source:** Laws 1963, c. 425, art. VII, § 6, p. 1423; Laws 1994, LB 414, § 118.

**75-707 Intersections between railroads and highways; crossing of wires; regulation.**

The commission shall regulate the crossing of wires across railroad rights-of-way at public highways within the state, except that when the crossing entity is

a railroad operator, the owners shall attempt to agree upon the terms and conditions of such crossing, and if such agreement cannot be concluded, the commission shall determine the terms and conditions subject to the provisions of sections 75-702 to 75-708.

**Source:** Laws 1963, c. 425, art. VII, § 7, p. 1423; Laws 1994, LB 414, § 119.

**75-708 Wires; violation; penalty; enforcement.**

Any person who strings or maintains any wire across any railroad right-of-way in this state at a different height or in a different manner than that prescribed by the commission, shall forfeit and pay to the State of Nebraska the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained, such forfeiture to be recovered in a civil action brought in any court of competent jurisdiction in the name of the State of Nebraska, by the Attorney General, or by the county attorney of the county in which the wire is situated, at the request of the commission. The Attorney General and the respective county attorneys shall bring such action forthwith upon being so requested.

**Source:** Laws 1963, c. 425, art. VII, § 8, p. 1423; Laws 1994, LB 414, § 120.

**75-709 Electric lines; clearance from other lines.**

All lines constructed for the transmission of electric current, including telephone and telegraph lines, on the public highways or in other places in this state, except as provided in section 75-724, shall provide sufficient clearance between such lines and existing properly constructed transmission, telephone, and telegraph lines so that they do not interfere with the reasonable safety, operation, and efficiency of existing lines.

**Source:** Laws 1963, c. 425, art. VII, § 9, p. 1423; Laws 1994, LB 414, § 121.

**75-710 Electric line; construction or voltage increase; application required, when.**

If the voltage of any electric line described in section 75-709 will exceed fifteen thousand volts and such line will be within one-quarter mile of any existing electrical or communication line of any other person or signal line of any railroad or if the voltage of such electric line will exceed seven hundred volts and such line will be within five hundred feet of the electrical or communication line of any other person or signal line of any railroad, application to construct the line shall be made to the commission, except that no application shall be required for any line which will not exceed fifteen thousand volts, which will not exceed six hundred sixty feet in length, and which will be more than seventy-five feet from any existing electrical or communication line of any other person or signal line of any railroad. The projectors of such line shall file with their application (1) a map or drawing showing the route of the proposed line and any existing electrical or communication lines or railroad signal lines within the respective distances described in this section, which drawing shall identify and give the names of the owners of such other lines, (2) specifications showing the manner of the construction of the proposed line, and (3) such other information as the commission may prescribe. Application shall

be made to increase the voltage of an existing line in the manner stated for new construction as provided in this section.

**Source:** Laws 1963, c. 425, art. VII, § 10, p. 1424; Laws 1980, LB 611, § 1; Laws 1981, LB 485, § 1; Laws 1994, LB 414, § 122.

**75-711 Application to construct line or increase voltage; notice; hearing.**

Upon application being filed pursuant to section 75-710, the commission shall notify all parties who own or operate electrical or communication lines or railroad signal lines and who are likely to be affected by the construction of the electrical lines to appear at a public hearing at a time and place to be fixed by the commission for hearing of the application. Any such party may appear as provided in the rules of procedure of the commission. The commission shall take into consideration the prior occupancy of the space by existing lines.

**Source:** Laws 1963, c. 425, art. VII, § 11, p. 1424; Laws 1981, LB 485, § 2; Laws 1994, LB 414, § 123.

**75-712 Electric line paralleling or intersecting certain telephone lines; inductive interference; effect.**

Notwithstanding any provisions of sections 75-709 to 75-711, whenever electric lines which parallel or intersect one-wire ground return telephone lines are constructed, maintained and operated in accordance with recognized standard engineering specifications, the owner of the electric lines shall not be liable for any inductive electrical interference which the use and operation of the electric lines may cause to the one-wire ground return telephone lines, and no application for authority to construct, operate and maintain such electric lines shall be denied because such lines will create inductive interference in any existing one-wire ground return telephone lines.

**Source:** Laws 1963, c. 425, art. VII, § 12, p. 1424.

**75-713 Construction near airports; application; when.**

Any public utility, public power district, or other governmental subdivision or any person in this state, before engaging in the construction or alteration of any overhead wire, cable, or pipeline, the height of which is greater than five feet above the elevation of an airport which has been approved and licensed by the Division of Aeronautics of the Department of Transportation, for each five hundred feet of the distance that such construction is or will be situated from the nearest boundary of such airport, shall file with the commission an original application for permission to enter upon and complete such construction or alteration and shall also file a copy thereof with the division. No application need be made when the construction or alteration is within the corporate limits of a city or village and is adjacent to other structures of a permanent character which are of equal or greater height than the construction or alteration proposed. No such overhead wire, cable, or pipeline for which application is required to be filed under sections 75-713 to 75-717 shall be constructed or altered without specific permission granted by order of the commission.

**Source:** Laws 1963, c. 425, art. VII, § 13, p. 1425; Laws 1980, LB 611, § 2; Laws 1993, LB 121, § 472; Laws 1994, LB 414, § 124; Laws 2017, LB339, § 266.

**75-714 Construction near airports; application; notice; hearing; waiver; rules and regulations by Director of Aeronautics.**

Upon the filing of an application by any applicant for permission to construct or alter any overhead wire, cable, or pipeline as provided in section 75-713, the commission shall notify the Director of Aeronautics of the filing of the application and the date that it will be heard before the commission, except that if the application is accompanied by approval in writing of the Director of Aeronautics, the hearing may be waived and the permission granted without such hearing unless otherwise required by law. The Director of Aeronautics shall establish and publish rules and regulations consistent with the rules of the United States Department of Commerce, Division of Aeronautics, and the National Electrical Safety Code covering the requirements that the applicant is required to meet in order to obtain approval for the construction or alteration of any overhead wire, cable, or pipeline which is not exempt from the requirements of section 75-713.

**Source:** Laws 1963, c. 425, art. VII, § 14, p. 1425; Laws 1994, LB 414, § 125.

**75-715 Construction near airports; notice of hearing; to whom; objections.**

The Director of Aeronautics shall notify the owners of and persons operating upon any licensed airport affected by any application filed pursuant to section 75-713 and in the notice shall state the time and place of the hearing. The director may appear at the hearing and make objections to the granting of permission for the construction of any overhead wires, cable, or pipelines when, in his or her opinion, the construction would result in danger to the life, limb, or property of any person carried by and operating aircraft in the vicinity of the licensed airport.

**Source:** Laws 1963, c. 425, art. VII, § 15, p. 1426; Laws 1980, LB 611, § 3; Laws 1994, LB 414, § 126.

A party is precluded from objecting to the order of the Public Service Commission if he fails to act in accordance with the time limits prescribed in the statutes governing the procedure to obtain a reversal, modification, or vacation of the order. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

An order of the Public Service Commission granting authority to the public power district to construct a transmission line becomes final thirty days after the mailing of a copy of the order, and it may not be revoked after that time. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

**75-716 Division of Aeronautics; file list of airports with commission.**

The Division of Aeronautics of the Department of Transportation shall at all times maintain on file in the office of the commission a list of the airports currently licensed by the division setting forth the legal description of the real property thus used.

**Source:** Laws 1963, c. 425, art. VII, § 16, p. 1426; Laws 1980, LB 611, § 4; Laws 1994, LB 414, § 127; Laws 2017, LB339, § 267.

**75-717 Construction near airports; hearing; order.**

The commission shall determine from the evidence presented at the hearing held pursuant to section 75-714 whether the applicant has made adequate allowance for the proper glide angles for the landing of aircraft at the airport concerned and shall determine, in conformity with the provisions of section 75-721, what order should be entered in the premises.

**Source:** Laws 1963, c. 425, art. VII, § 17, p. 1426; Laws 1994, LB 414, § 128.

**75-718 Transmission, telephone, or telegraph lines; commission may vacate side of highway, when.**

If a transmission, telephone, or telegraph carrier proposes to construct a line under the provisions of sections 75-709 to 75-724 on a highway both sides of which are occupied by telephone and telegraph lines or transmission lines, the commission shall order one side of the highway vacated, shall designate the side to be vacated, and shall assess the expense thereof to the parties interested in such proportions as in its judgment would best protect the rights of all parties interested and those of the general public.

**Source:** Laws 1963, c. 425, art. VII, § 18, p. 1426; Laws 1994, LB 414, § 129.

**75-719 Specified electrical transmission lines; construction requirements; applications; exceptions; line extension; delayed application; procedure.**

An electrical transmission line for which application is required under section 75-710 will have complied with all the requirements of section 75-710 when built in accordance with the order and specifications of the commission for the construction of a line giving reasonable protection to existing lines. A separate order and set of specifications shall be issued covering the construction of each transmission line or addition thereto. No application need be made to the commission for authority to construct a customer's primary service connection between an existing electric transmission line on either side of a highway and a customer's transformer location. The construction of such a primary service connection shall conform to the requirements of law and the rules and regulations of the commission and shall be used for a customer's service only no part of which shall be along or on a section line, public road, or property owned by another party. A line extension not to exceed one-half mile in length, for which application is required under section 75-710, may be built from an existing electric transmission line prior to obtaining approval of such extension by the commission if all the owners or operators of existing electrical or communication lines, or railroad signal lines located within the respective distances described in section 75-710, and the Director of Aeronautics, if required by sections 75-713 and 75-714, consent to such construction. The construction of such line extension shall conform to the requirements of law and the rules and regulations of the commission. Within thirty days after the construction of such a line extension, an application shall be made for construction of such extension as required in other cases and shall be referred to as a delayed application. All provisions of law relating to electric transmission line applications, notices, hearings, and orders shall apply to such delayed application. Neither the fact that the line extension has been built nor the consent thereto given by owners of other lines shall affect in any way the conclusion or authority of the commission. If it is finally determined that the application should be denied because the line does not comply with law, the owner shall remove the line extension.

**Source:** Laws 1963, c. 425, art. VII, § 19, p. 1427; Laws 1980, LB 611, § 5; Laws 1981, LB 485, § 3.

**75-720 Proposed construction; electrical lines; application, notice, or hearing; unnecessary; when.**

Provisions of law requiring filing of applications with the commission and other procedures for proposed construction of any electrical line pursuant to section 75-711 need not be complied with when the electric transmission carrier has given written notice by certified mail, with a copy to the commission by certified mail, of such proposed construction providing full information, including location drawing, electrical characteristics, physical configuration, and length of parallel of and proposed separation from other electrical, communication, or railroad signal lines, to any person who owns or operates electrical, communication, or railroad signal lines within the respective distances described in section 75-710, and such person has failed to file with such electric transmission carrier, within sixty days of receipt of the notice, a written protest, together with the reasons for objecting to the proposed construction. The sixty-day notice period for protest may be waived by signed agreement between such person and the electric transmission carrier. Receipt of a waiver shall be evidence that the sixty-day notice period is also waived. When the electric transmission carrier proposing the construction is required by section 75-713 to file an application with the commission or wants to receive a commission ruling, it shall file with its application copies of the notices sent by certified mail or signed copies of agreements with any person who owns or operates electrical, communication, or railroad signal lines within the respective distances described in section 75-710 and a signed copy of the agreement of the Director of Aeronautics if required by law, indicating their concurrence in the proposed construction. Upon receipt of such filing, the commission may approve the application to construct and may grant a permit without notice or a public hearing.

**Source:** Laws 1963, c. 425, art. VII, § 20, p. 1428; Laws 1980, LB 611, § 6; Laws 1981, LB 485, § 4; Laws 1994, LB 414, § 130.

**75-721 Construction; operation; commission may regulate.**

The commission may prohibit the construction of any line found to be in violation of the terms of section 75-709. After the hearing provided for in section 75-711, the commission shall make such order and prescribe such terms and conditions for the location, construction, and operation of the proposed line as it may deem just and reasonable. It may make such orders in the premises as in its judgment would best protect the rights of all parties interested and those of the general public. It is hereby made unlawful for any person, not specifically exempt, to begin or carry on the construction of any line designed to carry electric current for which application is required under section 75-710 or to increase the voltage of any existing line which would require such application without having first secured authority from the commission as set forth in section 75-710.

**Source:** Laws 1963, c. 425, art. VII, § 21, p. 1428; Laws 1980, LB 611, § 7; Laws 1993, LB 121, § 473; Laws 1994, LB 414, § 131.

**75-722 Procedure; appeal; provisions applicable.**

Commission hearings concerning the provisions of sections 75-709 to 75-724 shall be in accordance with the Administrative Procedure Act. Any appeals therefrom shall be in accordance with section 75-136.

**Source:** Laws 1963, c. 425, art. VII, § 22, p. 1428; Laws 1994, LB 414, § 132; Laws 2000, LB 1285, § 14; Laws 2013, LB545, § 9.

## Cross References

Administrative Procedure Act, see section 84-920.

**75-723 Transmission, telephone, and telegraph lines; violations; penalty.**

Any person who violates any of the provisions of sections 75-709 to 75-724 shall be guilty of a Class II misdemeanor.

**Source:** Laws 1963, c. 425, art. VII, § 23, p. 1428; Laws 1977, LB 39, § 206; Laws 1993, LB 121, § 474; Laws 1994, LB 414, § 133.

**75-724 Lines in cities or villages; exempt.**

The provisions of sections 75-709 to 75-724 shall not apply to any line within the limits of any incorporated city or village.

**Source:** Laws 1963, c. 425, art. VII, § 24, p. 1429; Laws 1994, LB 414, § 134.

## ARTICLE 8 MISCELLANEOUS

## Section

- 75-801. Prior license, certificate, permit, authorization; remain in force until their expiration; rights of parties not affected.  
 75-802. Transferred to section 25-226.  
 75-803. Repealed. Laws 1987, LB 5, § 1.

**75-801 Prior license, certificate, permit, authorization; remain in force until their expiration; rights of parties not affected.**

No license, certificate, permit, or other authorization in force on October 19, 1963, shall be invalidated by the passage of sections 75-101 to 75-801, but all such shall remain in force until their expiration under the terms of the law in effect at the time of their original issuance or until their renewal, surrender, suspension, or revocation under the provisions of sections 75-101 to 75-801. No rights, privileges, or immunities vested or accrued by and under prior statutes repealed by sections 75-101 to 75-801, no suits pending, no proceedings pending before the commission, no rights of action conferred, and no duties, restrictions, liabilities, or penalties imposed or required by and under such statutes shall be impaired, diminished, or affected by the repeal thereof.

**Source:** Laws 1963, c. 425, art. VIII, § 1, p. 1429.

**75-802 Transferred to section 25-226.****75-803 Repealed. Laws 1987, LB 5, § 1.**

## ARTICLE 9 GRAIN DEALER ACT

## Section

- 75-901. Act, how cited.  
 75-902. Terms, defined.  
 75-903. Grain dealer; licensure; requirements; fee.  
 75-903.01. License; suspension or revocation; procedure.  
 75-903.02. Criminal history record information check; fingerprinting; when.  
 75-904. Grain dealer; receipt, contract, bill of lading, other written communication requirements.

§ 75-901

PUBLIC SERVICE COMMISSION

Section	
75-905.	Recourse to grain dealer's security; when.
75-906.	Violation of security; commission; powers.
75-907.	Commission; adopt rules and regulations.
75-907.01.	Commission; inspection; powers.
75-908.	Enforcement of act.
75-909.	Violation; penalty.
75-910.	Civil penalty.

**75-901 Act, how cited.**

Sections 75-901 to 75-910 shall be known and may be cited as the Grain Dealer Act.

**Source:** Laws 1985, LB 389, § 3; Laws 1987, LB 507, § 1; Laws 2003, LB 735, § 2.

**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 producer of the grain within this state for purposes of selling such grain or (ii) 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 feeder or 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; Laws 2015, LB183, § 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 one hundred dollars which shall be due on or before the date established by the commission for each license. Such fees shall be paid to the State Treasurer and credited to the General Fund;

(2) 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 who files a valid claim arising from a sale to 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 fifteen days after the date of the last shipment of any contract. The liability of the surety shall cover purchases made 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

(3) File a reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm. 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 accounting firm'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; Laws 2015, LB183, § 2.

Pursuant to the former subsection (4) of this section, the warehouse bond and the dealer bond cannot be combined, because the activity covered by each bond is unique and the requirements for bond protection under each bond are different. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

#### **75-903.01 License; suspension or revocation; procedure.**

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any grain dealer for failure to comply with the requirements of the Grain Dealer Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the grain dealer with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a grain dealer's license pending the determination of the complaint.

**Source:** Laws 1987, LB 507, § 4.

#### **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.

**75-904 Grain dealer; receipt, contract, bill of lading, other written communication requirements.**

Each grain dealer or his or her agent upon taking possession of grain from a seller shall issue a receipt, contract, bill of lading, or other written communication to the seller or his or her agent. The grain dealer receipt, contract, bill of lading, or other written communication issued by the grain dealer shall include the provisions of section 75-905 and be in such form as the Public Service Commission may by rule and regulation require.

**Source:** Laws 1985, LB 389, § 6; Laws 2015, LB183, § 3.

A buyer's failure to give the seller a proper receipt as required by this section does not render null and void the time requirements of section 75-905 to preserve a claim against the buyer's security pursuant to section 75-906. Fecht v. The Bunnell Co., 243 Neb. 1, 497 N.W.2d 50 (1993).

**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 fifteen 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 fifteen days after its issuance; and
- (c) Notifies the commission within fifteen 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 fifteen 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; Laws 2015, LB183, § 4.

Grain sellers claims on grain dealer's bond denied because claims were not filed with the Public Service Commission within 10 days of apparent loss. Fecht v. Quality Processing, 244 Neb. 522, 508 N.W.2d 236 (1993).

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time

requirements of this section to preserve a claim against the buyer's security pursuant to section 75-906. Fecht v. The Bunnell Co., 243 Neb. 1, 497 N.W.2d 50 (1993).

**75-906 Violation of security; commission; powers.**

In the event the commission determines that the conditions of a grain dealer's security have been violated, the commission may demand that such dealer's security be forfeited and may place the proceeds of the security in an interest-bearing trust until it fully determines each claim on the security. The commission shall disburse the security according to each claim determined. If the amount of the security is less than the claims against it, the security shall be distributed pro rata among the claimants. If the security is a bond or letter of credit, the surety or the issuer of such letter shall pay over the security on demand by the commission. If such issuer of a letter of credit or surety for a grain dealer fails or refuses to pay the security to the commission within ten days, the commission may file a lawsuit in an appropriate court and recover the amount of the security plus interest at the highest legal rate from the date of its demand on the issuer of a letter of credit or surety if the court finds that any claim determined by the commission against the grain dealer's security was valid.

**Source:** Laws 1985, LB 389, § 8.

**§ 75-906**

**PUBLIC SERVICE COMMISSION**

The Public Service Commission has limited jurisdiction to determine the claims that exist under the Grain Dealer Act on the date of a warehouse closure. In re Claims Against Pierce Elevator, 291 Neb. 798, 868 N.W.2d 781 (2015).

requirements of section 75-905 to preserve a claim against the buyer's security pursuant to this section. Fecht v. The Bunnell Co., 243 Neb. 1, 497 N.W.2d 50 (1993).

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time

**75-907 Commission; adopt rules and regulations.**

The commission may adopt and promulgate all rules and regulations necessary to carry out the Grain Dealer Act.

**Source:** Laws 1985, LB 389, § 9; Laws 1987, LB 507, § 5.

**75-907.01 Commission; inspection; powers.**

The property, books, records, accounts, papers, and proceedings of every grain dealer shall, at all times during business hours, be subject to inspection by the commission.

**Source:** Laws 1987, LB 507, § 6.

**75-908 Enforcement of act.**

The commission, county and municipal law enforcement agencies, and the Attorney General shall enforce the Grain Dealer Act.

**Source:** Laws 1985, LB 389, § 10; Laws 1987, LB 507, § 7; Laws 2015, LB183, § 5.

**75-909 Violation; penalty.**

Any person or partner, limited liability company member, officer, or agent of any person who knowingly and intentionally violates any of the provisions of the Grain Dealer Act shall be guilty of a Class IV felony and, in addition, shall be liable for any damages suffered as a result of such violation.

**Source:** Laws 1985, LB 389, § 11; Laws 1987, LB 507, § 8; Laws 1989, LB 35, § 1; Laws 1993, LB 121, § 475; Laws 1994, LB 884, § 88.

**75-910 Civil penalty.**

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Dealer Act.

**Source:** Laws 2003, LB 735, § 6.

**ARTICLE 10**

**WATER SERVICE REGULATION**

Section

- 75-1001. Act, how cited.
- 75-1002. Terms, defined.
- 75-1003. Private water company; rates and charges; regulation by commission.
- 75-1004. Commission; access to books and records.
- 75-1005. Review of rates and charges; petition; hearing; notice.
- 75-1006. Change to rates or charges; notice.
- 75-1007. Change to rates or charges; petition; hearing; notice; procedure.
- 75-1008. Commission; issue order; appeal; denial; effect.
- 75-1009. Rate or charge; yield authorized.
- 75-1010. Rules and regulations.
- 75-1011. Violation; civil penalty.
- 75-1012. Enforcement of act.

**75-1001 Act, how cited.**

Sections 75-1001 to 75-1012 shall be known and may be cited as the Water Service Regulation Act.

**Source:** Laws 1994, LB 1002, § 1.

**75-1002 Terms, defined.**

For purposes of the Water Service Regulation Act:

(1) Commission shall mean the Public Service Commission; and

(2) Private water company shall mean a privately owned entity organized for the purpose of furnishing water for domestic use or sewer services or both to the public, cities, villages, special districts, or other political subdivisions but shall not include (a) any entity that furnishes water for domestic use or sewer services to a mobile home park, (b) bottled water suppliers, or (c) any group of property owners who cooperatively own a water well for the sole purpose of providing water for domestic use to their property if each owner has an equal vote in determining the rates charged for the water.

**Source:** Laws 1994, LB 1002, § 2.

**75-1003 Private water company; rates and charges; regulation by commission.**

The rates and charges of a private water company shall be regulated by the commission as provided in the Water Service Regulation Act. On or before July 1 each year, each private water company shall file a schedule of its rates and charges with the commission and shall also certify to the commission the number of customers it serves.

**Source:** Laws 1994, LB 1002, § 3.

**75-1004 Commission; access to books and records.**

The commission and its agents shall be entitled to access to all books, records, and other information of a private water company which may be necessary for the commission to determine whether it may exercise regulatory authority under the Water Service Regulation Act and to carry out its regulatory authority under the act.

**Source:** Laws 1994, LB 1002, § 4.

**75-1005 Review of rates and charges; petition; hearing; notice.**

Within ninety days after July 1, 1994, a petition may be filed with the commission requesting a review of the established rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the established rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission. Notice of a hearing shall be given in the same manner as prescribed in subsection (2) of section 75-1007.

**Source:** Laws 1994, LB 1002, § 5.

**75-1006 Change to rates or charges; notice.**

A private water company which proposes to change any of its rates or charges shall provide sixty days' notice to its customers and the commission of the proposed rates or charges.

**Source:** Laws 1994, LB 1002, § 6.

**75-1007 Change to rates or charges; petition; hearing; notice; procedure.**

(1) Prior to the effective date of the proposed rates or charges, a petition may be filed with the commission requesting a review of the proposed rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the proposed rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission.

(2) Notice of a hearing shall be served on customers by the commission at least fifteen days prior to the day of the hearing. Notice of the hearing shall also be published by the commission at least once a week for two successive weeks in a newspaper of general circulation in each service area affected by or to be affected by the proposed rates or charges with the date of last publication at least ten days prior to the hearing.

(3) At least ten days prior to the hearing, the commission shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

(4) Any person may appear at the hearing and present testimony, evidence, exhibits, or other information and may do so in person or by counsel, or both, pursuant to the rules and regulations of the commission.

**Source:** Laws 1994, LB 1002, § 7.

**75-1008 Commission; issue order; appeal; denial; effect.**

(1) After the conclusion of any hearing held pursuant to section 75-1005 or 75-1007, the commission shall grant or deny the rates or charges that were considered at the hearing and, if other rates or charges are to be adopted, shall decide on any modifications to the rates or charges that the commission considers necessary based on the evidence adduced at the hearing.

(2) The commission shall issue a written order setting out its findings and reasoning for its decision. The commission's order may be appealed by a party to the proceeding. Such appeal shall be in accordance with section 75-136.

(3) If the hearing is held pursuant to a petition filed pursuant to section 75-1007, if the proposed rates or charges become effective before the decision of the commission, and if the decision denies the proposed rates or charges, then the proposed rates or charges shall be denied retroactively and any amounts collected under the proposed rates or charges shall be refunded by the private water company. If the hearing is held pursuant to a petition filed pursuant to section 75-1005 and if the decision of the commission modifies the established rates or charges, then the established rates or charges shall be modified as of the date of the decision and shall not be retroactive.

**Source:** Laws 1994, LB 1002, § 8; Laws 2003, LB 187, § 25.

**75-1009 Rate or charge; yield authorized.**

(1) No rate or charge determined by the commission pursuant to the Water Service Regulation Act may yield more than a fair return on the fair value of property used and useful in rendering service to the public.

(2) The commission shall not include in the basis for establishment of the rate or charge any amounts spent by the private water company for advertising or other public relations expenses.

**Source:** Laws 1994, LB 1002, § 9.

**75-1010 Rules and regulations.**

The commission may adopt and promulgate rules and regulations necessary to carry out the Water Service Regulation Act.

**Source:** Laws 1994, LB 1002, § 10.

**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.

**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.