TABLE OF CHAPTERS

REISSUE REVISED STATUTES

REVISED STATUTES
OF
NEBRASKA

2008 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 2
CHAPTERS 60 TO 72, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2008

CHAPTER 60
MOTOR VEHICLES

Article.

ARTICLE 1
MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

60-101 Act, how cited.

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1.

60-102 Definitions, where found.

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

Source: Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2.

60-103 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway device which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

Source: Laws 2005, LB 276, § 3.

60-104 Assembled vehicle, defined.

Assembled vehicle means a vehicle that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the vehicle was assembled. Assembled vehicle also includes a specially constructed vehicle.

Source: Laws 2005, LB 276, § 4.

60-105 Body, defined.

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame.

Source: Laws 2005, LB 276, § 5.

60-106 Bus, defined.

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source: Laws 2005, LB 276, § 6.

60-107 Cabin trailer, defined.

Cabin trailer means a trailer or a semitrailer, which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer does not mean a trailer or semitrailer which is permanently attached to real estate. There are four classes of cabin trailers:

(1) Camping trailer which includes cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which includes cabin trailers more than one hundred two inches in width or more than forty feet in length;

(3) Travel trailer which includes cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288; and

(4) 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 frame 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.

Source: Laws 2005, LB 276, § 7; Laws 2008, LB797, § 1.
Operative date April 1, 2008.

60-108 Collector, defined.

Collector means the owner of one or more vehicles of historical interest who collects, purchases, acquires, trades, or disposes of such vehicles or parts

thereof for his or her own use in order to preserve, restore, and maintain a vehicle or vehicles for hobby purposes.

Source: Laws 2005, LB 276, § 8.

60-109 Commercial trailer, defined.

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

Source: Laws 2005, LB 276, § 9.

60-110 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2005, LB 276, § 10.

60-111 Designated county official, defined.

Designated county official means the county official, other than the county clerk, designated by a county board to provide services pursuant to section 23-186.

Source: Laws 2005, LB 276, § 11.

60-112 Director, defined.

Director means the Director of Motor Vehicles.

Source: Laws 2005, LB 276, § 12.

60-113 Electric personal assistive mobility device, defined.

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

Source: Laws 2005, LB 276, § 13.

60-114 Farm trailer, defined.

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products as defined in section 60-304 to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services.

Source: Laws 2005, LB 276, § 14; Laws 2007, LB286, § 3.

60-115 Fertilizer trailer, defined.

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

Source: Laws 2005, LB 276, § 15.

60-116 Frame, defined.

Frame means that portion of a vehicle upon which other components are affixed, such as the engine, body, or transmission.

Source: Laws 2005, LB 276, § 16.

60-117 Historical vehicle, defined.

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 276, § 17; Laws 2006, LB 663, § 2; Laws 2007, LB286, § 4.

60-118 Inspection, defined.

Inspection means an identification inspection conducted pursuant to section 60-146.

Source: Laws 2005, LB 276, § 18.

60-119 Kit vehicle, defined.

Kit vehicle means a vehicle assembled by a person other than a generally recognized manufacturer of vehicles by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. The term kit vehicle does not include glider kits.

Source: Laws 2005, LB 276, § 19.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 5.

60-120 Major component part, defined.

Major component part means an engine, with or without accessories, a transmission, a cowl, a door, a frame, a body, a rear clip, or a nose.

Source: Laws 2005, LB 276, § 20.

60-121 Minibike, defined.

Minibike means a two-wheel device which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel device primarily de-

signed by the manufacturer for off-road use only. Minibike does not include an electric personal assistive mobility device.

Source: Laws 2005, LB 276, § 21.

60-122 Moped, defined.

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Source: Laws 2005, LB 276, § 22.

60-123 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power except (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6.

60-124 Motorcycle, defined.

Motorcycle means any motor vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground.

Source: Laws 2005, LB 276, § 24.

60-125 Nose, defined.

Nose means that portion of the body of a vehicle from the front to the firewall when acquired or transferred as a complete unit.

Source: Laws 2005, LB 276, § 25.

60-126 Parts vehicle, defined.

Parts vehicle means a vehicle generally in nonoperable condition which is owned by a collector to furnish parts that are usually not obtainable from

normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

Source: Laws 2005, LB 276, § 26.

60-127 Patrol, defined.

Patrol means the Nebraska State Patrol.

Source: Laws 2005, LB 276, § 27.

60-128 Rear clip, defined.

Rear clip means two or more of the following, all dismantled from the same vehicle: A quarter panel or fender; a floor panel assembly; or a trunk lid or gate.

Source: Laws 2005, LB 276, § 28.

60-129 Semitrailer, defined.

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

Source: Laws 2005, LB 276, § 29.

60-130 Situs, defined.

Situs means the tax district where a vehicle is stored and kept for the greater portion of the calendar year. For a vehicle used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

Source: Laws 2005, LB 276, § 30.

60-131 Specially constructed vehicle, defined.

Specially constructed vehicle means a vehicle which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of vehicles. The term specially constructed vehicle includes kit vehicle.

Source: Laws 2005, LB 276, § 31.

60-132 Superintendent, defined.

Superintendent means the Superintendent of Law Enforcement and Public Safety.

Source: Laws 2005, LB 276, § 32.

60-133 Trailer, defined.

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Source: Laws 2005, LB 276, § 33.

60-134 Truck, defined.

Truck means any motor vehicle designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 276, § 34; Laws 2007, LB286, § 7.

60-135 Utility trailer, defined.

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

Source: Laws 2005, LB 276, § 35.

60-136 Vehicle, defined.

Vehicle means a motor vehicle, all-terrain vehicle, minibike, trailer, or semitrailer.

Source: Laws 2005, LB 276, § 36.

60-136.01 Vehicle identification number, defined.

Vehicle identification number means a series of English letters or Arabic or Roman numerals assigned to a vehicle for identification purposes.

Source: Laws 2007, LB286, § 8.

60-137 Act; applicability.

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

(a) Farm trailers;

(b) Low-speed vehicles;

(c) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(d) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2.
Effective date July 18, 2008.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-138 Manufacturer's or importer's certificate; vehicle identification number.

No manufacturer, importer, dealer, or other person shall sell or otherwise dispose of a new vehicle to a dealer to be used by such dealer for purposes of display and resale without (1) delivering to such dealer a duly executed manufacturer's or importer's certificate with such assignments as may be necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No dealer shall purchase or acquire a new vehicle without obtaining from the seller such manufacturer's or importer's certificate.

Source: Laws 2005, LB 276, § 38.

60-139 Certificate of title; vehicle identification number; required; when.

Except as provided in section 60-137, 60-138, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

Source: Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3.

60-140 Acquisition of vehicle; proof of ownership; effect.

Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (1) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (2) a written instrument as required by section 60-1417, or (3) an affidavit and notarized bill of sale as provided in section 60-142.01. No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section.

Source: Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4.

60-141 Dealer; inventory; certificates required; when.

A dealer need not apply for certificates of title for any vehicles in stock or acquired for stock purposes, but upon transfer of such vehicle in stock or

acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on such vehicle or an assignment of a manufacturer's or importer's certificate. If all reassignments on the manufacturer's or importer's certificate have been used, the dealer may attach a dealer assignment form prescribed by the department prior to any subsequent transfer. If all reassignments on the dealer assignment form or the certificate of title have been used, the dealer shall obtain title in the dealer's name prior to any subsequent transfer. No dealer shall execute a reassignment on or transfer ownership by way of a manufacturer's statement of origin unless the dealer is franchised by the manufacturer of the vehicle.

Source: Laws 2005, LB 276, § 41; Laws 2008, LB756, § 2.
Operative date March 20, 2008.

60-142 Historical vehicle or parts vehicle; sale or transfer.

The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

Source: Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5.

60-142.01 Vehicle manufactured prior to 1940; transfer of title; requirements.

If the owner does not have a certificate of title for a vehicle which was manufactured prior to 1940 and which has not had any major component part replaced, the department shall search its records for evidence of issuance of a Nebraska certificate of title for such vehicle at the request of the owner. If no certificate of title has been issued for such vehicle in the thirty-year period prior to application, the owner may transfer title to the vehicle by giving the transferee a notarized bill of sale, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, and a statement from the department that no certificate of title has been issued for such vehicle in the thirty-year period prior to application. The transferee may apply for a certificate of title pursuant to section 60-149 by presenting the documentation described in this section in lieu of a certificate of title.

Source: Laws 2006, LB 663, § 6.

60-142.02 Application for certificate of title indicating year, make, and model originally designated by manufacturer; procedure.

If the owner does not have a certificate of title for a vehicle manufactured more than thirty years prior to application for a certificate of title and one or more major component parts have been replaced with one or more replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of the vehicle, the owner may apply for a certificate of title indicating that the year, make, and model of the vehicle is that originally designated by the manufacturer by presenting a notarized bill of sale for each major component part replaced, an affidavit in support of the application for title, a statement that an inspection has been conducted on the vehicle, a statement from a car

club representative pursuant to section 60-142.03, and a vehicle identification number as described in section 60-148.

Source: Laws 2006, LB 663, § 7.

60-142.03 Recognized car club; qualified car club representative; department; powers and duties.

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county clerks and designated county officials.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclu-

sion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

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

Source: Laws 2006, LB 663, § 8.

60-142.04 Assembled vehicle; application for certificate of title; procedure.

The owner of (1) an assembled vehicle or (2) a vehicle which was manufactured or assembled more than thirty years prior to application for a certificate of title with one or more major component parts replaced by replacement parts, other than replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, may apply for a certificate of title by presenting a certificate of title for one major component part, a notarized bill of sale for all other major component parts replaced, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as the year application for title was made and the make of the vehicle as assembled.

Source: Laws 2006, LB 663, § 9.

60-142.05 Kit vehicle; application for certificate of title; procedure.

The owner of a kit vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the kit, a notarized bill of sale for all major component parts not in the kit, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as the year application for title was made and the make of the vehicle as assembled.

Source: Laws 2006, LB 663, § 10.

60-142.06 Certificate of title as assembled vehicle; application for certificate of title indicating year, make, and model; procedure.

An owner of a vehicle which has previously been issued a certificate of title as an assembled vehicle in this state may have the vehicle inspected by a qualified car club representative who shall determine whether or not any modifications or replacement parts are essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle and obtain a statement as provided in section 60-142.03. The owner may apply for a certificate of title indicating the year, make, and model of the vehicle by presenting the statement and an application for certificate of title to the department. After review of the application, the department shall issue the

certificate of title to the owner if the vehicle meets the specifications provided in section 60-142.02.

Source: Laws 2006, LB 663, § 11.

60-143 Vehicle with modification or deviation from original specifications; how treated.

An owner of a vehicle with a modification or deviation from the original specifications may be permitted to apply for a certificate of title under sections 60-142.01 to 60-142.03 if such modification or deviation is of historic nature and essentially the same in design and material to that originally supplied by the manufacturer for vehicles of that era or if the modification or deviation could be considered to be in the category of safety features. Safety-related modifications include hydraulic brakes, sealed-beam headlights, and occupant protection systems as defined in section 60-6,265. A modification or deviation involving accessories shall be limited to those accessories available in the era to which the vehicle belongs.

Source: Laws 2005, LB 276, § 43; Laws 2006, LB 663, § 12.

60-144 Certificate of title; issuance; filing; application; form.

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county clerk or designated county official shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle or a minibike resides in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the owner resides.

(3) If a vehicle, other than an all-terrain vehicle or a minibike, has situs in Nebraska, the application shall be filed with the county clerk or designated county official of the county in which the vehicle has situs.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are any liens on the vehicle, the division shall deliver or mail the certificate of title to the holder of the first lien on the day of issuance. All certificates of title issued by the division shall be issued in the manner prescribed for the county clerk or designated county official in section 60-152.

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3.

60-145 Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required.

For any motor vehicle which is to be used as a taxi or limousine, the application and the certificate of title shall show on the face thereof that such vehicle is being used or has been used as a taxi or limousine and such subsequent certificates of title shall show the same information.

Source: Laws 2005, LB 276, § 45; Laws 2007, LB286, § 10.

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized.

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county clerk or designated county official shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's

ownership records, the county clerk or designated county official shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The department, county clerk, or designated county official may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11.

60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement.

(1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county clerk or designated county official shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164 and delivery to the holder of the first lien.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county clerk or designated county official of the county of application for title. The county clerk or designated county official shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall

not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

Source: Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9.

60-148 Assignment of distinguishing identification number; when.

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county clerk or designated county official, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle or minibike or assembled vehicle, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14.

60-149 Application; documentation required.

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) If a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate;

(ii) A duly certified copy thereof;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law; or

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(3) The county clerk or designated county official shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Source: Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15.

60-150 Application; county clerk or designated county official; duties.

The county clerk or designated county official shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county clerk or designated county official shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

Source: Laws 2005, LB 276, § 50.

60-151 Certificate of title obtained in name of purchaser; exceptions.

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 18-1738, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Source: Laws 2005, LB 276, § 51.

60-152 Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.

(1) The county clerk or designated county official shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county clerk or designated

county official shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be delivered or mailed to the holder of the first lien on the day of issuance.

(2) The county clerks or county treasurers of the various counties shall adopt a circular seal with the words County Clerk of . . . . . (insert name) County or County Treasurer of . . . . . (insert name) County thereon. Such seal shall be used by the county clerk or county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title. The designated county official or the deputy or legal authorized agent of such officer shall use the seal of the county, without charge to the applicant, on any such document.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a vehicle, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12.

60-153 Certificate of title; form; contents; secure power-of-attorney form.

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words ''void if altered''. A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle or minibike shall include the words ''not to be registered for road use''.

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or

her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13.

60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7.

60-154.01 Motor Vehicle Fraud Cash Fund; created; use; investment.

The Motor Vehicle Fraud Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of revenue credited pursuant to section 60-154. The fund shall only be used by the Department of Justice for expenses incurred and related to (1) the investigation and prosecution of odometer and motor vehicle fraud and motor vehicle licensing violations which may be referred by the Nebraska Motor Vehicle Industry Licensing Board and (2) the investigation and prosecution of fraud relating to and theft of all-terrain vehicles and minibikes. Expenditures from the fund shall be approved by the Attorney General as authorized 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 2006, LB 1061, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-155 Notation of lien; fees.

(1) For each notation of a lien by a county, the fee shall be seven dollars. Two dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. One dollar shall be remitted to the State Treasurer for credit to the General Fund.

(2) For each notation of a lien by the department, the fee shall be seven dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 55.

60-156 Duplicate certificate of title; fees.

(1) For each duplicate certificate of title issued by a county for a vehicle, the fee shall be fourteen dollars. Ten dollars shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For each duplicate certificate of title issued by the department for a vehicle, the fee shall be fourteen dollars, which shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 56.

60-157 Repealed. Laws 2007, LB 286, § 57.

60-158 Identification inspection; fees.

(1) For each identification inspection conducted by the patrol, the fee shall be ten dollars, which shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(2) For each identification inspection conducted by a county sheriff, the fee shall be ten dollars, which shall be paid to the county treasurer and credited to the county sheriff's vehicle inspection account within the county general fund.

Source: Laws 2005, LB 276, § 58.

60-159 Application for vehicle identification number or distinguishing identification number; fee.

For each application for a metallic assigned vehicle identification number plate or other form of marking or identification under section 60-148, the fee shall be twenty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 276, § 59; Laws 2006, LB 663, § 17.

60-159.01 New title of vehicle previously issued title as assembled vehicle; fee.

For each certificate of title issued by the department under section 60-142.06, the fee shall be twenty-five dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2006, LB 663, § 18.

60-160 Bonded certificate of title; fee.

For each bonded certificate of title issued for a vehicle, the fee shall be fifty dollars, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 276, § 60.

60-161 County clerk or designated official; remit funds; when.

The county clerk or designated county official shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifth day of the month following collection. The county clerk or designated county official shall remit fees not due the State of Nebraska to the respective county treasurer who shall credit the fees to the county general fund.

Source: Laws 2005, LB 276, § 61.

60-162 Department; powers; rules and regulations.

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county clerk or designated county official of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county clerks and designated county officials with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county clerks and designated county officials under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

Source: Laws 2005, LB 276, § 62.

60-163 Department; cancellation of certificate of title; procedure.

(1) The department shall check with its records all duplicate certificates of title received from a county clerk or designated county official. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county clerk or designated county official who issued the same, and such county clerk or designated county official shall thereupon enter the

cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

Source: Laws 2005, LB 276, § 63.

60-164 Liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.

(1) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made by the county clerk, designated county official, or department on the face thereof, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in Chapter 60, article 14, and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer of a vehicle at retail from a dealer required to be licensed as provided in Chapter 60, article 14, shall take such vehicle free of any security interest. A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

(2) Subject to subsection (1) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the county clerk, designated county official, or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner

or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(3) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The owner of a vehicle may present a valid out-of-state certificate of title issued to such owner for such vehicle with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the face of the new certificate of title issued pursuant to section 60-144 without presenting a copy of the lien instrument. The county clerk or designated county official or the department shall enter the notation and the date thereof over the signature of such officer and the official seal. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk or designated county official or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(4) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle or a minibike, merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(5) The county clerk or designated county official or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk or designated county official or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county clerk or designated county official or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk or designated county official or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(6) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk or designated county official or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk or designated county official or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. If the holder of the title cannot locate a lienholder, a lien may

be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB756, section 3, with LB953, section 3, to reflect all amendments.

Note: Changes made by LB953 became effective July 18, 2008. Changes made by LB756 became operative July 18, 2008.

60-165 Security interest in all-terrain vehicle or minibike; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle or minibike certificate of title is issued and a notation of lien is made.

(2) Any lien noted on the face of an all-terrain vehicle or minibike certificate of title pursuant to subsection (1), (3), or (4) of this section, on behalf of the holder of a security interest in the all-terrain vehicle or minibike which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle or minibike shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle or minibike to permit notation of a lien on the certificate of title and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title pursuant to section 60-164.

(5) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle or minibike shall be governed by the laws under which it was perfected.

Source: Laws 2005, LB 276, § 65.

60-166 New certificate of title; issued when; proof required; processing of application.

(1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of any county or the department, if the last certificate of title was issued by the

department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be.

(2) If from the records in the office of the county clerk or designated county official or the department there appear to be any liens on such vehicle, such certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15.

60-167 Bonded certificate of title; application; fee; bond; issuance; release; statement on title; recall; procedure.

(1) The department shall issue a bonded certificate of title to an applicant who:

(a) Presents evidence reasonably sufficient to satisfy the department of the applicant's ownership of the vehicle or security interest in the vehicle;

(b) Provides a statement that an identification inspection has been conducted pursuant to section 60-146;

(c) Pays the fee as prescribed in section 60-160; and

(d) Files a bond in a form prescribed by the department and executed by the applicant.

(2) The bond shall be issued by a surety company authorized to transact business in this state, in an amount equal to one and one-half times the value of the vehicle as determined by the department using reasonable appraisal methods, and conditioned to indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage, including reasonable attorney's fees, incurred by reason of the issuance of the certificate of title to the vehicle or any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vehicle. An interested person may have a cause of action to recover on the bond for a breach of the conditions of the bond. The aggregate liability of the surety to all persons having a claim shall not exceed the amount of the bond.

(3) At the end of three years after the issuance of the bond, the holder of the certificate of title may apply to the department on a form prescribed by the department for the release of the bond and the removal of the notice required by subsection (4) of this section if no claim has been made on the bond. The department may release the bond at the end of three years after the issuance of the bond if all questions as to the ownership of the vehicle have been answered to the satisfaction of the department unless the department has been notified of the pendency of an action to recover on the bond. If the currently valid certificate of title is surrendered to the department, the department may release the bond prior to the end of the three-year period.

(4) The department shall include the following statement on a bonded certificate of title issued pursuant to this section and any subsequent title issued as a result of a title transfer while the bond is in effect:

NOTICE: THIS VEHICLE MAY BE SUBJECT TO AN UNDISCLOSED INTEREST, BOND NUMBER . . . . . .

(5) The department shall recall a bonded certificate of title if the department finds that the application for the title contained a false statement or if a check presented by the applicant for a bonded certificate of title is returned uncollected by a financial institution.

Source: Laws 2005, LB 276, § 67.

60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county clerk or designated county official, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county clerk or designated county official may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of

title by the owner, he or she shall forthwith surrender the same to the county clerk or designated county official or the department for cancellation.

Source: Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16.

60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.

The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county clerk or designated county official or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county clerk or designated county official or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county clerk or designated county official or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (5) of section 60-164.

Source: Laws 2007, LB286, § 17.

60-168.02 Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties.

(1) When a motor vehicle, commercial trailer, semitrailer, or cabin trailer is purchased by a motor vehicle dealer or trailer dealer and the original assigned certificate of title has been lost or mutilated, the dealer selling such motor vehicle or trailer may apply for an original certificate of title in the dealer's name. The following documentation and fees shall be submitted by the dealer:

(a) An application for a certificate of title in the name of such dealer;

(b) A photocopy from the dealer's records of the front and back of the lost or mutilated original certificate of title assigned to a dealer;

(c) A notarized affidavit from the purchaser of such motor vehicle or trailer for which the original assigned certificate of title was lost or mutilated stating that the original assigned certificate of title was lost or mutilated; and

(d) The appropriate certificate of title fee.

(2) The application and affidavit shall be on forms prescribed by the department. When the motor vehicle dealer or trailer dealer receives the new certificate of title in such dealer's name and assigns it to the purchaser, the dealer shall record the original sale date and provide the purchaser with a copy of the front and back of the original lost or mutilated certificate of title as evidence as to why the purchase date of the motor vehicle or trailer is prior to the issue date of the new certificate of title.

Source: Laws 2007, LB286, § 18; Laws 2008, LB756, § 4.
Operative date March 20, 2008.

60-169 Vehicle; certificate of title; surrender and cancellation; when required; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

(1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county official of the county where such certificate of title was issued or, if issued by the department, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon his or her records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county clerk or designated county official of the county where such certificate of title is issued or, if issued by the department, to the department, if at the time of surrender the owner submits to the county clerk, the designated county official, or the department an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (b)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county clerk or designated county official, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this

section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county clerk or designated county official shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and 33-112 to cover the costs of filing such affidavit. If the certificate of title is surrendered to the department, along with the affidavit required by subdivision (1)(b) of this section, the department shall enter a cancellation upon its records and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The department shall be entitled to collect fees from the person submitting the affidavit in accordance with sections 33-109 and 33-112 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, neither the county clerk, the designated county official, nor the department shall issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county clerk, designated county official, or department. If a certificate of title is issued by the county clerk, designated county official, or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

(a) A mobile home or manufactured home is affixed to real estate if the wheels, towing hitches, and running gear are removed and it is permanently attached to a foundation or other support system; and

(b) Ownership interest means the fee simple interest in real estate or an interest as the lessee under a lease of the real property that has a term that continues for at least twenty years after the recording of the affidavit under subsection (2) of this section.

(8) Upon cancellation of a certificate of title in the manner prescribed by this section, the county clerk or designated county official and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19.

60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county clerk or designated county official. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

Source: Laws 2005, LB 276, § 70.

60-171 Salvage branded certificate of title; terms, defined.

For purposes of sections 60-171 to 60-177:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model vehicle means a vehicle which has (a) a manufacturer's model year designation of, or later than, the year in which the vehicle was wrecked, damaged, or destroyed, or any of the six preceding years or (b)(i) in the case of vehicles other than all-terrain vehicles and minibikes, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter or (ii) in the case of all-terrain vehicles or minibikes, a retail value of more than one thousand seven hundred fifty dollars until January 1, 2010, and a retail value of more than one thousand seven hundred fifty dollars increased by two hundred fifty dollars every five years thereafter;

(3) Manufacturer buyback means the designation of a vehicle with an alleged nonconformity when the vehicle (a) has been replaced by a manufacturer or (b) has been repurchased by a manufacturer as the result of court judgment, arbitration, or any voluntary agreement entered into between the manufacturer or its agent and a consumer;

(4) Previously salvaged means the designation of a rebuilt or reconstructed vehicle which was previously required to be issued a salvage branded certificate of title and which has been inspected as provided in section 60-146;

(5) Retail value means the actual cash value, fair market value, or retail value of a vehicle as (a) set forth in a current edition of any nationally recognized compilation, including automated data bases, of retail values or (b) determined pursuant to a market survey of comparable vehicles with respect to condition and equipment; and

(6) Salvage means the designation of a vehicle which is:

(a) A late model vehicle which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the vehicle to its condition immediately before it was wrecked, damaged, or destroyed and to restore the vehicle to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the vehicle at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the vehicle as a salvage vehicle by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the vehicle.

Source: Laws 2005, LB 276, § 71.

60-172 Salvage branded certificate of title; required disclosure.

A certificate of title issued on or after January 1, 2003, shall disclose in writing, from any records readily accessible to the department or county officials or a law enforcement officer, anything which indicates that the vehicle was previously issued a title in another jurisdiction that bore any word or symbol signifying that the vehicle was damaged, including, but not limited to, older model salvage, unrebuildable, parts only, scrap, junk, nonrepairable, reconstructed, rebuilt, flood damaged, damaged, buyback, or any other indication, symbol, or word of like kind, and the name of the jurisdiction issuing the previous title.

Source: Laws 2005, LB 276, § 72.

60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.

When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk or designated county official, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle. If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 60-144. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

Source: Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19.

60-174 Salvage branded certificate of title; salvage, previously salvaged, or manufacturer buyback title brand; inspection; when.

Whenever a title is issued in this state for a vehicle that is designated a salvage, previously salvaged, or manufacturer buyback, the following title brands shall be required: Salvage, previously salvaged, or manufacturer buyback. A certificate branded salvage, previously salvaged, or manufacturer buyback shall be administered in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160. When a salvage branded certificate of title is surrendered for a certificate of title branded previously salvaged, the application for a certificate of title shall be accompanied by a statement of inspection as provided in section 60-146.

Source: Laws 2005, LB 276, § 74.

60-175 Salvage branded certificate of title; nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

Any person who acquires ownership of a salvage or manufacturer buyback vehicle for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county clerk or designated county official and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

Source: Laws 2005, LB 276, § 75.

60-176 Salvage branded certificate of title; prohibited act; penalty.

Any person who knowingly transfers a wrecked, damaged, or destroyed vehicle in violation of sections 60-171 to 60-177 is guilty of a Class IV felony.

Source: Laws 2005, LB 276, § 76.

60-177 Salvage branded certificate of title; sections; how construed.

Nothing in sections 60-171 to 60-177 shall be construed to require the actual repair of a wrecked, damaged, or destroyed vehicle to be designated as salvage.

Source: Laws 2005, LB 276, § 77.

60-178 Stolen vehicle; duties of law enforcement and department.

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county clerk or designated county official of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county clerk or designated county official who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of such stolen or converted vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

Source: Laws 2005, LB 276, § 78.

60-179 Prohibited acts; penalty.

A person commits a Class IV felony if he or she (1) forges any certificate of title or manufacturer's or importer's certificate to a vehicle, any assignment of either certificate, or any cancellation of any lien on a vehicle, (2) holds or uses such certificate, assignment, or cancellation knowing the same to have been forged, (3) procures or attempts to procure a certificate of title to a vehicle or

passes or attempts to pass a certificate of title or any assignment thereof to a vehicle, knowing or having reason to believe that such vehicle has been stolen, (4) sells or offers for sale in this state a vehicle on which the motor number or manufacturer's serial number has been destroyed, removed, covered, altered, or defaced with knowledge of the destruction, removal, covering, alteration, or defacement of such motor number or manufacturer's serial number, (5) knowingly uses a false or fictitious name, knowingly gives a false or fictitious address, knowingly makes any false statement in any application or affidavit required under the Motor Vehicle Certificate of Title Act or in a bill of sale or sworn statement of ownership, or (6) otherwise knowingly commits a fraud in any application for a certificate of title.

Source: Laws 2005, LB 276, § 79.

60-180 Violations; penalty.

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county clerk or designated county official as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 80.

60-181 Vehicle identification inspections; training expenses; how paid.

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and

distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county clerks, designated county officials, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

Source: Laws 2005, LB 276, § 81.

60-182 Vehicle identification inspections; sheriff; designate inspectors.

The sheriff shall designate a sufficient number of persons to become certified to assure completion of inspections with reasonable promptness.

Source: Laws 2005, LB 276, § 82.

60-183 Vehicle identification inspections; inspectors; certificate required; issuance.

No person shall conduct an inspection unless he or she is the holder of a current certificate of training issued by the patrol. The certificate of training shall be issued upon completion of a course of instruction, approved by the patrol, in the identification of stolen and altered vehicles. The superintendent may require an individual to take such additional training as he or she deems necessary in order to maintain a current certificate of training.

Source: Laws 2005, LB 276, § 83.

60-184 Vehicle identification inspections; application for training; contents.

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county clerk or designated county official to assist in accomplishing inspections. Upon designation, the person shall request approval for training from the superintendent. Any person requesting approval for training shall submit a written application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

Source: Laws 2005, LB 276, § 84.

60-185 Vehicle identification inspections; application for training; investigation; denial; grounds.

(1) Upon receipt of an application for training pursuant to section 60-184, the patrol may inquire into the qualifications of the applicant and may also inquire into the background of the applicant.

(2) The patrol shall not approve any applicant who has (a) knowingly purchased, sold, or done business in stolen vehicles or parts therefor, (b) been found guilty of any felony which has not been pardoned, been found guilty of any misdemeanor concerning fraud or conversion, or suffered any judgment in

any civil action involving fraud, misrepresentation, or conversion, or (c) made a false material statement in his or her application.

Source: Laws 2005, LB 276, § 85.

60-186 Vehicle identification inspections; revocation of certificate of training; procedure; appeal.

The patrol may, after notice and a hearing, revoke a certificate of training. The patrol shall only be required to hold a hearing if the hearing is requested in writing within fifteen days after notice of the proposed revocation is delivered by the patrol. The patrol may revoke a certificate of training for any reason for which an applicant may be denied approval for training pursuant to section 60-185. The patrol may revoke a certificate of training if the holder fails to keep a certificate current by taking any additional training the patrol may require. The patrol may revoke a certificate of training if the patrol finds that the holder is incompetent. A rebuttable presumption of incompetence shall arise from a finding by the patrol or a court of competent jurisdiction that the holder of a certificate of training has issued a statement of inspection for a stolen vehicle. Any person who feels himself or herself aggrieved by the patrol's decision to revoke a certificate may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 276, § 86.

Cross References

Administrative Procedure Act, see section 84-920.

60-187 Vehicle identification inspections; attendance at training; restriction.

No individual, other than a peace officer, shall attend training for inspections funded under the Nebraska State Patrol Cash Fund unless such individual has been designated by a sheriff and approved by the patrol.

Source: Laws 2005, LB 276, § 87.

60-188 Vehicle identification inspections; restriction on authority to inspect.

A holder of a certificate of training who is an employee of a licensee as determined by the department shall not inspect any vehicle which is not owned by his or her sponsoring licensee. A holder of a certificate of training who is a licensee shall not inspect any vehicle which he or she does not own.

Source: Laws 2005, LB 276, § 88.

60-189 Vehicle identification inspections; superintendent; duty.

The superintendent shall, from time to time, provide each county clerk or designated county official and each sheriff with a list of persons holding then current certificates of training.

Source: Laws 2005, LB 276, § 89.

60-190 Odometers; unlawful acts; exceptions.

It shall be unlawful for any person to:

(1) Knowingly tamper with, adjust, alter, change, disconnect, or fail to connect an odometer of a motor vehicle, or cause any of the foregoing to occur,

to reflect a mileage different than has actually been driven by such motor vehicle except as provided in section 60-191;

(2) With intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer is disconnected or nonfunctional; or

(3) Advertise for sale, sell, use, or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than that actually driven.

Sections 60-190 to 60-196 shall not apply to gross-rated motor vehicles of more than sixteen thousand pounds.

Source: Laws 2005, LB 276, § 90.

60-191 Odometers; repaired or replaced; notice.

If any odometer is repaired or replaced, the reading of the repaired or replaced odometer shall be set at the reading of the odometer repaired or replaced immediately prior to repair or replacement and the adjustment shall not be deemed a violation of section 60-190, except that when the repaired or replaced odometer is incapable of registering the same mileage as before such repair or replacement, the repaired or replaced odometer shall be adjusted to read zero and a notice in writing on a form prescribed by the department shall be attached to the left door frame of the motor vehicle, or in the case of a motorcycle, to the frame of the motorcycle, by the owner or his or her agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced and any removal or alteration of such notice so affixed shall be deemed a violation of section 60-190.

Source: Laws 2005, LB 276, § 91.

60-192 Odometers; transferor; statement; contents.

The transferor of any motor vehicle of an age of less than ten years, which was equipped with an odometer by the manufacturer, shall provide to the transferee a statement, signed by the transferor, setting forth: (1) The mileage on the odometer at the time of transfer; and (2)(a) a statement that, to the transferor's best knowledge, such mileage is that actually driven by the motor vehicle, (b) a statement that the transferor has knowledge that the mileage shown on the odometer is in excess of the designated mechanical odometer limit, or (c) a statement that the odometer reading does not reflect the actual mileage and should not be relied upon because the transferor has knowledge that the odometer reading differs from the actual mileage and that the difference is greater than that caused by odometer calibration error. If a discrepancy exists between the odometer reading and the actual mileage, a warning notice to alert the transferee shall be included with the statement. The transferor shall retain a true copy of such statement for a period of five years from the date of the transaction.

Source: Laws 2005, LB 276, § 92.

60-193 Odometers; application for certificate of title; statement required.

The statement required by section 60-192 shall be on a form prescribed by the department or shall appear on the certificate of title. Such statement shall be submitted with the application for certificate of title unless the statement appears on the certificate of title being submitted with the application. The

statement required by section 60-192 shall appear on the new certificate of title issued in the name of the transferee. No certificate of title shall be issued for a motor vehicle unless the application is accompanied by such statement or unless the information required by such statement appears on the certificate of title being submitted with the application.

Source: Laws 2005, LB 276, § 93; Laws 2006, LB 663, § 20.

60-194 Odometers; motor vehicle dealer; duties; violation; effect.

No licensed motor vehicle dealer shall have in his or her possession as inventory for sale any used motor vehicle of an age of less than twenty-five years for which the dealer does not have in his or her possession the transferor's statement required by section 60-192 unless a certificate of title has been issued for such motor vehicle in the name of the dealer. Violation of sections 60-190 to 60-196 shall be grounds for suspension or revocation of a motor vehicle dealer's license under the provisions of Chapter 60, article 14.

Source: Laws 2005, LB 276, § 94.

60-195 Odometers; motor vehicle dealer; not guilty of violation; conditions.

A licensed motor vehicle dealer reassigning a certificate of title shall not be guilty of a violation of sections 60-190 to 60-196 if such dealer has in his or her possession the transferor's statement and if he or she has no knowledge that the statement is false and that the odometer does not reflect the mileage actually driven by the motor vehicle.

Source: Laws 2005, LB 276, § 95.

60-196 Odometers; retention of statement; violation; penalty.

Any transferor who does not retain a true copy of the odometer statement for a period of five years from the date of the transaction as required by section 60-192 shall be guilty of a Class V misdemeanor. Any person who violates any other provision of sections 60-190 to 60-196 shall be guilty of a Class IV felony.

Source: Laws 2005, LB 276, § 96.

60-197 Certificates, statements, notations, rules, regulations, and orders under prior law; effect.

(1) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of manufacturer's or importer's certificates, certificates of title of any kind, odometer statements, or security interests or liens in existence on such date. All such certificates, statements, and notations are valid under the Motor Vehicle Certificate of Title Act as if issued or made under such act.

(2) The repeal of Chapter 60, article 1, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Certificate of Title Act is not intended to affect the validity of certificates of training for inspections in existence on such date. All such certificates are valid under the Motor Vehicle Certificate of Title Act as if issued under such act.

(3) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 1, shall remain in effect as if issued under the Motor Vehicle Certificate of Title Act

unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

Source: Laws 2005, LB 276, § 97.

ARTICLE 3
MOTOR VEHICLE REGISTRATION

Section

Section

Section

60-301 Act, how cited.

Sections 60-301 to 60-3,221 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5.
Operative date July 1, 2008.

60-302 Definitions, where found.

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-303 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6.
Operative date July 1, 2008.

60-303 Agricultural floater-spreader implement, defined.

Agricultural floater-spreader implement means self-propelled equipment which is designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops and which has a gross laden weight of forty-eight thousand pounds or less and is equipped with floatation tires.

Source: Laws 2005, LB 274, § 3.

60-304 Agricultural products, defined.

Agricultural products means field crops and horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee, and farm products, including sod grown on the land owned or rented by the farmer, and the byproducts derived from any of them.

Source: Laws 2005, LB 274, § 4.

60-305 All-terrain vehicle, defined.

All-terrain vehicle means any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

Source: Laws 2005, LB 274, § 5.

60-306 Alternative fuel, defined.

Alternative fuel has the same meaning as in section 66-686.

Source: Laws 2005, LB 274, § 6.

60-307 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland transportation of patients upon the highways in this state or any other motor vehicle used for such purposes but does not include or mean any motor vehicle owned or operated under the direct control of an agency of the United States Government.

Source: Laws 2005, LB 274, § 7.

60-308 Apportionable vehicle, defined.

(1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

Source: Laws 2005, LB 274, § 8; Laws 2007, LB286, § 22.

60-309 Assembled vehicle, defined.

Assembled vehicle means a motor vehicle or trailer that is materially altered from its construction by the removal, addition, or substitution of new or used major component parts. Its make shall be assembled, and its model year shall be the year in which the motor vehicle or trailer was assembled. Assembled vehicle also includes a specially constructed vehicle.

Source: Laws 2005, LB 274, § 9.

60-310 Automobile liability policy, defined.

Automobile liability policy means liability insurance written by an insurance carrier duly authorized to do business in this state protecting other persons from damages for liability on account of accidents occurring subsequent to the effective date of the insurance arising out of the ownership of a motor vehicle (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of other persons in any one accident. An automobile liability policy shall not exclude liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured.

Source: Laws 2005, LB 274, § 10.

60-311 Base jurisdiction, defined.

Base jurisdiction means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where miles or kilometers are accrued by the fleet, and where operational records of such fleet are maintained or can be made available.

Source: Laws 2005, LB 274, § 11; Laws 2006, LB 853, § 1; Laws 2007, LB239, § 1; Laws 2008, LB756, § 7.
Operative date July 1, 2008.

60-312 Boat dealer, defined.

Boat dealer means a person engaged in the business of buying, selling, or exchanging boats at retail who has a principal place of business for such purposes in this state.

Source: Laws 2005, LB 274, § 12.

60-313 Bus, defined.

Bus means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Source: Laws 2005, LB 274, § 13.

60-314 Cabin trailer, defined.

Cabin trailer means any trailer designed for living quarters and for being towed by a motor vehicle and not exceeding one hundred two inches in width, forty feet in length, or thirteen and one-half feet in height, except as provided in subdivision (2)(k) of section 60-6,288.

Source: Laws 2005, LB 274, § 14.

60-315 Collector, defined.

Collector means the owner of one or more historical vehicles who collects, purchases, acquires, trades, or disposes of such historical vehicles or parts thereof for his or her own use in order to preserve, restore, and maintain a historical vehicle or vehicles for hobby purposes.

Source: Laws 2005, LB 274, § 15.

60-316 Commercial motor vehicle, defined.

Commercial motor vehicle means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks.

Source: Laws 2005, LB 274, § 16.

60-317 Commercial trailer, defined.

Commercial trailer means any trailer or semitrailer which has a gross weight, including load thereon, of more than nine thousand pounds and which is designed, used, or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property. Commercial trailer does not include cabin trailers, farm trailers, fertilizer trailers, or utility trailers.

Source: Laws 2005, LB 274, § 17.

60-318 Current model year vehicle, defined.

Current model year vehicle means a motor vehicle or trailer for which the model year as designated by the manufacturer corresponds to the calendar year.

Source: Laws 2005, LB 274, § 18.

60-319 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2005, LB 274, § 19.

60-320 Designated county official, defined.

Designated county official means the county official, other than the county treasurer, designated by a county board to provide services pursuant to section 23-186.

Source: Laws 2005, LB 274, § 20.

60-321 Director, defined.

Director means the Director of Motor Vehicles.

Source: Laws 2005, LB 274, § 21.

60-322 Electric personal assistive mobility device, defined.

Electric personal assistive mobility device means a self-balancing, two-non-tandem-wheeled device, designed to transport only one person and containing an electric propulsion system with an average power of seven hundred fifty watts or one horsepower, whose maximum speed on a paved level surface, when powered solely by such a propulsion system and while being ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

Source: Laws 2005, LB 274, § 22.

60-323 Evidence of insurance, defined.

Evidence of insurance means evidence of a current and effective automobile liability policy.

Source: Laws 2005, LB 274, § 23.

60-324 Farm trailer, defined.

Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services. Farm trailer does not include a trailer so used when attached to a farm tractor.

Source: Laws 2005, LB 274, § 24; Laws 2007, LB286, § 23.

60-325 Farm truck, defined.

Farm truck means a truck or sport utility vehicle, including any combination of a truck, truck-tractor, or sport utility vehicle, and a trailer or semitrailer, of a farmer or rancher (1) used exclusively to carry a farmer's or rancher's own supplies, farm equipment, and household goods to or from the owner's farm or ranch, (2) used by the farmer or rancher to carry his or her own agricultural products to or from storage or market, (3) used by a farmer or rancher in exchange of services in such hauling of supplies or agricultural products, or (4) used occasionally to carry camper units, to tow boats or cabin trailers, or to

carry or tow museum pieces or historical vehicles, without compensation, to events for public display or educational purposes.

Source: Laws 2005, LB 274, § 25; Laws 2007, LB286, § 24.

60-326 Fertilizer trailer, defined.

Fertilizer trailer means any trailer, including gooseneck applicators or trailers, designed and used exclusively to carry or apply agricultural fertilizer or agricultural chemicals and having a gross weight, including load thereon, of twenty thousand pounds or less.

Source: Laws 2005, LB 274, § 26.

60-327 Film vehicle, defined.

Film vehicle means any motor vehicle or trailer used exclusively by a nonresident production company temporarily on location in Nebraska producing a feature film, television commercial, documentary, or industrial or educational videotape production.

Source: Laws 2005, LB 274, § 27.

60-328 Finance company, defined.

Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged.

Source: Laws 2005, LB 274, § 28.

60-329 Fleet, defined.

Fleet means one or more apportionable vehicles.

Source: Laws 2005, LB 274, § 29.

60-330 Gross vehicle weight, defined.

Gross vehicle weight means the sum of the empty weights of a truck or truck-tractor and the empty weights of any trailer, semitrailer, or combination thereof with which the truck or truck-tractor is to be operated in combination at any one time, plus the weight of the maximum load to be carried thereon at any one time.

Source: Laws 2005, LB 274, § 30.

60-331 Gross vehicle weight rating, defined.

Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle or trailer.

Source: Laws 2005, LB 274, § 31.

60-332 Highway, defined.

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.

Source: Laws 2005, LB 274, § 32.

60-333 Historical vehicle, defined.

Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 274, § 33; Laws 2006, LB 663, § 22; Laws 2007, LB286, § 25.

60-334 Injurisdiction distance, defined.

Injurisdiction distance means total miles or kilometers operated (1) in the State of Nebraska during the preceding year by the motor vehicle or vehicles registered and licensed for fleet operation and (2) in noncontracting reciprocity jurisdictions by fleet vehicles that are base-plated in Nebraska.

Source: Laws 2005, LB 274, § 34.

60-334.01 International Registration Plan, defined.

International Registration Plan means the International Registration Plan adopted by International Registration Plan, Inc.

Source: Laws 2008, LB756, § 8.
Operative date July 1, 2008.

60-335 Kit vehicle, defined.

Kit vehicle means a motor vehicle or trailer assembled by a person other than a generally recognized manufacturer of motor vehicles or trailers by the use of a replica purchased from an authorized manufacturer and accompanied by a manufacturer's statement of origin. Kit vehicle does not include glider kits.

Source: Laws 2005, LB 274, § 35.

60-336 Local truck, defined.

Local truck means a truck and combinations of trucks, truck-tractors, or trailers operated solely within an incorporated city or village or within ten miles of the corporate limits of the city or village in which they are owned, operated, and registered.

Source: Laws 2005, LB 274, § 36.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 26.

60-337 Minibike, defined.

Minibike means a two-wheel motor vehicle which has a total wheel and tire diameter of less than fourteen inches or an engine-rated capacity of less than forty-five cubic centimeters displacement or any other two-wheel motor vehicle primarily designed by the manufacturer for off-road use only. Minibike shall not include an electric personal assistive mobility device.

Source: Laws 2005, LB 274, § 37.

60-338 Moped, defined.

Moped means a bicycle with fully operative pedals for propulsion by human power, an automatic transmission, and a motor with a cylinder capacity not exceeding fifty cubic centimeters which produces no more than two brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than thirty miles per hour on level ground.

Source: Laws 2005, LB 274, § 38.

60-339 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power except (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27.

60-340 Motorcycle, defined.

Motorcycle means any motor vehicle having a seat or saddle for use of the operator and designed to travel on not more than three wheels in contact with the ground.

Source: Laws 2005, LB 274, § 40.

60-341 Noncontracting reciprocity jurisdiction, defined.

Noncontracting reciprocity jurisdiction means any jurisdiction which is not a party to any type of contracting agreement between the State of Nebraska and one or more other jurisdictions for registration purposes on commercial motor vehicles or trailers and, as a condition to operate on the highways of that jurisdiction, (1) does not require any type of motor vehicle or trailer registration or allocation of motor vehicles or trailers for registration purposes or (2)

does not impose any charges based on miles operated, other than those that might be assessed against fuel consumed in that jurisdiction, on any motor vehicles or trailers which are part of a Nebraska-based fleet.

Source: Laws 2005, LB 274, § 41.

60-342 Owner, defined.

Owner means a person, firm, or corporation which holds a legal title of a motor vehicle or trailer. If (1) a motor vehicle or trailer is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, (2) a motor vehicle or trailer is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (3) a mortgagor of a motor vehicle or trailer is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 42; Laws 2006, LB 853, § 2; Laws 2007, LB239, § 2; Laws 2008, LB756, § 9.
Operative date July 1, 2008.

60-343 Park, defined.

Park means to stop a motor vehicle or trailer for any length of time, whether occupied or unoccupied.

Source: Laws 2005, LB 274, § 43.

60-344 Parts vehicle, defined.

Parts vehicle means a motor vehicle or trailer generally in nonoperable condition which is owned by a collector to furnish parts that are usually not obtainable from normal sources, thus enabling a collector to preserve, restore, and maintain a historical vehicle.

Source: Laws 2005, LB 274, § 44.

60-345 Passenger car, defined.

Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire. Passenger car may include a sport utility vehicle.

Source: Laws 2005, LB 274, § 45; Laws 2007, LB286, § 28.

60-346 Proof of financial responsibility, defined.

Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (1) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (2) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (3) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.

Source: Laws 2005, LB 274, § 46.

60-347 Recreational vehicle, defined.

Recreational vehicle means a motor vehicle designed for living quarters.

Source: Laws 2005, LB 274, § 47.

60-348 Semitrailer, defined.

Semitrailer means any trailer so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

Source: Laws 2005, LB 274, § 48.

60-349 Situs, defined.

Situs means the tax district where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year. For a motor vehicle or trailer used or owned by a student, the situs is at the place of residence of the student if different from the place at which he or she is attending school.

Source: Laws 2005, LB 274, § 49.

60-350 Snowmobile, defined.

Snowmobile means a self-propelled vehicle designed to travel on snow or ice or a natural terrain steered by wheels, skis, or runners and propelled by a belt-driven track with or without steel cleats.

Source: Laws 2005, LB 274, § 50.

60-351 Specially constructed vehicle, defined.

Specially constructed vehicle means a motor vehicle or trailer which was not originally constructed under a distinctive name, make, model, or type by a manufacturer of motor vehicles or trailers. Specially constructed vehicle includes kit vehicle.

Source: Laws 2005, LB 274, § 51.

60-351.01 Sport utility vehicle, defined.

Sport utility vehicle means a high-performance motor vehicle weighing six thousand pounds or less designed to carry ten passengers or less or designated as a sport utility vehicle by the manufacturer.

Source: Laws 2007, LB286, § 29.

60-352 Suspension of operator's license, defined.

Suspension of operator's license means the temporary withdrawal by formal action of the department of a person's motor vehicle operator's license for a period specifically designated by the department, if any, and until compliance with all conditions for reinstatement.

Source: Laws 2005, LB 274, § 52.

60-353 Total fleet distance, defined.

Total fleet distance means the distance traveled by a fleet in all jurisdictions during the preceding year.

Source: Laws 2005, LB 274, § 53.

60-354 Trailer, defined.

Trailer means any device without motive power designed for carrying persons or property and being towed by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Source: Laws 2005, LB 274, § 54.

60-355 Transporter, defined.

Transporter means any person lawfully engaged in the business of transporting motor vehicles or trailers not his or her own solely for delivery thereof (1) by driving singly, (2) by driving in combinations by the towbar, fullmount, or saddlemount method or any combination thereof, or (3) when a truck or truck-tractor tows a trailer.

Source: Laws 2005, LB 274, § 55; Laws 2007, LB286, § 30.

60-356 Truck, defined.

Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 274, § 56; Laws 2007, LB286, § 31.

60-357 Truck-tractor, defined.

Truck-tractor means any motor vehicle designed and used primarily for towing other motor vehicles or trailers and not so constructed as to carry a load other than a part of the weight of the motor vehicle or trailer and load being towed.

Source: Laws 2005, LB 274, § 57.

60-358 Utility trailer, defined.

Utility trailer means a trailer having a gross weight, including load thereon, of nine thousand pounds or less.

Source: Laws 2005, LB 274, § 58.

60-359 Well-boring apparatus, defined.

Well-boring apparatus means trucks, truck-tractors, or combinations of trucks or truck-tractors and trailers which are not for hire and are used exclusively to travel to and from the well site including (1) the well rig truck, (2) the boom truck, (3) the water tank truck, and (4) such other devices as are used exclusively for transporting well-boring apparatus to and from the well site including the drill stem, casing, drilling mud, pumps and related equipment, and well-site excavating machinery or equipment.

Source: Laws 2005, LB 274, § 59.

60-360 Well-servicing equipment, defined.

Well-servicing equipment means equipment used for the (1) care and replacement of down-hole production equipment and (2) restimulation of a well.

Source: Laws 2005, LB 274, § 60.

60-361 Department; powers.

The department may administer and enforce the International Registration Plan Act and the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 61.

Cross References

International Registration Plan Act, see section 60-3,192.

60-362 Registration required; presumption.

Unless otherwise expressly provided, no motor vehicle shall be operated or parked and no trailer shall be towed or parked on the highways of this state unless the motor vehicle or trailer is registered in accordance with the Motor Vehicle Registration Act. There shall be a rebuttable presumption that any motor vehicle or trailer stored and kept more than thirty days in the state is being operated, parked, or towed on the highways of this state, and such motor vehicle or trailer shall be registered in accordance with the act, from the date of title of the motor vehicle or trailer or, if no transfer in ownership of the motor vehicle or trailer has occurred, from the expiration of the last registration period for which the motor vehicle or trailer was registered. No motor vehicle or trailer shall be eligible for initial registration in this state, except a motor vehicle or trailer registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198, unless the Motor Vehicle Certificate of Title Act has been complied with insofar as the motor vehicle or trailer is concerned.

Source: Laws 2005, LB 274, § 62; Laws 2006, LB 765, § 5.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

60-363 Registration certificate; duty to carry.

No person shall operate or park a motor vehicle or tow or park a trailer on the highways unless such motor vehicle or trailer at all times carries in or upon it, subject to inspection by any peace officer, the registration certificate issued for it. In the case of a motorcycle, the registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.

Source: Laws 2005, LB 274, § 63.

60-364 Transfer of vehicle; effect on registration.

Upon the transfer of ownership of any motor vehicle or trailer, its registration shall expire.

Source: Laws 2005, LB 274, § 64.

60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such

motor vehicle or trailer, for examination, a certificate showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

Source: Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11.
Operative date July 18, 2008.

60-366 Nonresident owner; registration; when; reciprocity.

(1) Any nonresident owner who desires to register a motor vehicle or trailer in this state shall register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

(2) A nonresident owner, except as provided in subsection (3) of this section, owning any motor vehicle or trailer which has been properly registered in the state, country, or other place of which the owner is a resident, and which at all times, when operated or towed in this state, has displayed upon it the license plate or plates issued for such motor vehicle or trailer in the place of residence of such owner, may operate or permit the operation or tow or permit the towing of such motor vehicle or trailer within the state without registering such motor vehicle or trailer or paying any fees to this state.

(3) Any nonresident owner gainfully employed or present in this state, operating a motor vehicle or towing a trailer in this state, shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state. Any nonresident owner who operates a motor vehicle or tows a trailer in this state for thirty or more continuous days shall register such motor vehicle or trailer in the same manner as a Nebraska resident unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state.

Source: Laws 2005, LB 274, § 66.

60-367 Nonresident; applicability of act.

The provisions of the Motor Vehicle Registration Act relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident of this state, other than a foreign corporation doing business in this state, if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of motor vehicles or trailers and the display of registration numbers thereon and conspicuously displays his or her registration numbers as required thereby.

Source: Laws 2005, LB 274, § 67.

60-368 Nonresident; nonresident licensed vehicles hauling grain or seasonally harvested products; reciprocity.

Sections 60-367 and 60-3,112 shall be operative as to motor vehicles or trailers owned by a nonresident of this state only to the extent that under the

laws of the foreign country, state, territory, or federal district of his or her residence, like exemptions and privileges are guaranteed to motor vehicles or trailers duly registered under the laws of and owned by residents of this state or to a motor vehicle or trailer duly licensed in the state of residence and operated by a nonresident agricultural worker, certified by the Department of Labor, as engaged in temporary agricultural employment in this state, for a period of not to exceed sixty days.

Source: Laws 2005, LB 274, § 68.

60-369 Operation of vehicle without registration; purchase from state or political subdivision; proof of ownership.

Any purchaser of a motor vehicle or trailer from the State of Nebraska or any political subdivision of the state may operate such motor vehicle or tow such trailer without registration for a period of thirty days. Upon demand of proper authority, satisfactory proof of ownership, which shall be either the certificate of title to such motor vehicle or trailer with assignment thereof duly executed or a bill of sale which describes such motor vehicle or trailer with identification number, shall be presented by the person in charge of such motor vehicle or trailer for examination.

Source: Laws 2005, LB 274, § 69.

60-370 County number system; alphanumeric system.

(1)(a) Each county in the state shall use the county number system except as otherwise provided in this section.

(b) Registration of motor vehicles or trailers as farm trucks or farm trailers shall be by the county number system.

(2) Counties using the county number system shall show on motor vehicles or trailers licensed therein a county number on the license plate preceding a dash which shall then be followed by the registration number assigned to the motor vehicle or trailer. The county numbers assigned to the counties in Nebraska shall be as follows:

No.	Name of County	No.	Name of County
1	Douglas	2	Lancaster
3	Gage	4	Custer
5	Dodge	6	Saunders
7	Madison	8	Hall
9	Buffalo	10	Platte
11	Otoe	12	Knox
13	Cedar	14	Adams
15	Lincoln	16	Seward
17	York	18	Dawson
19	Richardson	20	Cass
21	Scotts Bluff	22	Saline
23	Boone	24	Cuming
25	Butler	26	Antelope
27	Wayne	28	Hamilton
29	Washington	30	Clay
31	Burt	32	Thayer
33	Jefferson	34	Fillmore
35	Dixon	36	Holt
37	Phelps	38	Furnas

39	Cheyenne	40	Pierce
41	Polk	42	Nuckolls
43	Colfax	44	Nemaha
45	Webster	46	Merrick
47	Valley	48	Red Willow
49	Howard	50	Franklin
51	Harlan	52	Kearney
53	Stanton	54	Pawnee
55	Thurston	56	Sherman
57	Johnson	58	Nance
59	Sarpy	60	Frontier
61	Sheridan	62	Greeley
63	Boyd	64	Morrill
65	Box Butte	66	Cherry
67	Hitchcock	68	Keith
69	Dawes	70	Dakota
71	Kimball	72	Chase
73	Gosper	74	Perkins
75	Brown	76	Dundy
77	Garden	78	Deuel
79	Hayes	80	Sioux
81	Rock	82	Keya Paha
83	Garfield	84	Wheeler
85	Banner	86	Blaine
87	Logan	88	Loup
89	Thomas	90	McPherson
91	Arthur	92	Grant
93	Hooker		

(3)(a) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in counties having a population of one hundred thousand inhabitants or more according to the most recent federal decennial census shall be by an alphanumeric system rather than by the county number system.

(b) Except as provided in subdivision (1)(b) of this section, registration of motor vehicles or trailers in all other counties shall be, at the option of each county board, by either the alphanumeric system or the county number system.

(c) Counties using the alphanumeric system shall show on the license plates of motor vehicles or trailers licensed therein a combination of three letters followed by a combination of three numerals. The department may adopt and promulgate rules and regulations creating alphanumeric distinctions on the license plates based upon the registration of the motor vehicle or trailer.

Source: Laws 2005, LB 274, § 70.

60-371 Exemption from civil liability.

The county and the county treasurer or designated county official and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 71.

60-372 Vehicle titling and registration computer system; agent of county treasurer; appointment.

(1) Each county shall issue and file registration certificates using the vehicle titling and registration computer system prescribed by the department.

(2) The county treasurer or designated county official may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

Source: Laws 2005, LB 274, § 72.

60-373 Operation of vehicle without registration; dealer; employee or agent; licensed manufacturer; conditions.

(1) Each licensed motor vehicle dealer or trailer dealer as defined in section 60-1401.02 doing business in this state, in lieu of registering each motor vehicle or trailer which such dealer owns of a type otherwise required to be registered, or any full-time or part-time employee or agent of such dealer may, if the motor vehicle or trailer displays dealer number plates:

(a) Operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating, or use in the ordinary course and conduct of business as a motor vehicle or trailer dealer. Such use may include personal or private use by the dealer and personal or private use by any bona fide employee licensed pursuant to Chapter 60, article 14, if the employee can be verified by payroll records maintained at the dealership as ordinarily working more than thirty hours per week or fifteen hundred hours per year at the dealership;

(b) Operate or tow the motor vehicle or trailer upon the highways of this state for transporting industrial equipment held by the licensee for purposes of demonstration, sale, rental, or delivery; or

(c) Sell the motor vehicle or trailer.

(2) Each licensed manufacturer as defined in section 60-1401.02 which actually manufactures or assembles motor vehicles or trailers within this state, in lieu of registering each motor vehicle or trailer which such manufacturer owns of a type otherwise required to be registered, or any employee of such manufacturer may operate or tow the motor vehicle or trailer upon the highways of this state solely for purposes of transporting, testing, demonstrating to prospective customers, or use in the ordinary course and conduct of business as a motor vehicle or trailer manufacturer, upon the condition that any such motor vehicle or trailer display thereon, in the manner prescribed in section 60-3,100, dealer number plates as provided for in section 60-3,114.

(3) In no event shall such plates be used on motor vehicles or trailers hauling other than automotive or trailer equipment, complete motor vehicles, or trailers which are inventory of such licensed dealer or manufacturer unless there is issued by the department a special permit specifying the hauling of other products. This section shall not be construed to allow a dealer to operate a motor vehicle or trailer with dealer number plates for the delivery of parts inventory. A dealer may use such motor vehicle or trailer to pick up parts to be used for the motor vehicle or trailer inventory of the dealer.

Source: Laws 2005, LB 274, § 73.

60-374 Operation of vehicle without registration; prospective buyer; conditions; special permit; fee.

Motor vehicles or trailers owned by a dealer and bearing dealer number plates may be operated or towed upon the highways for demonstration purposes by any prospective buyer thereof for a period of forty-eight hours. Motor vehicles or trailers owned and held for sale by a dealer and bearing such dealer number plates may be operated or towed upon the highways for a period of forty-eight hours as service loaner vehicles by customers having their vehicles repaired by the dealer. Upon delivery of such motor vehicle or trailer to such prospective buyer for demonstration purposes or to a service customer, the dealer shall deliver to the prospective buyer or service customer a card or certificate giving the name and address of the dealer, the name and address of the prospective buyer or service customer, and the date and hour of such delivery and the products to be hauled, if any, under a special permit. The special permit and card or certificate shall be in such form as shall be prescribed by the department and shall be carried by such prospective buyer or service customer while operating such motor vehicle or towing such trailer. The department shall charge ten dollars for each special permit issued under this section.

Source: Laws 2005, LB 274, § 74.

60-375 Operation of vehicle without registration; finance company; repossession plates; fee.

(1) A finance company which is licensed to do business in this state may, in lieu of registering each motor vehicle or trailer repossessed, upon the payment of a fee of ten dollars, make an application to the department for a repossession registration certificate and one repossession license plate. Additional pairs of repossession certificates and repossession license plates may be procured for a fee of ten dollars each. Repossession license plates may be used only for operating or towing motor vehicles or trailers on the highways for the purpose of repossession, demonstration, and disposal of such motor vehicles or trailers. The repossession certificate shall be displayed on demand for any motor vehicle or trailer which has a repossession license plate. A finance company shall be entitled to a dealer license plate only in the event such company is licensed as a motor vehicle dealer or trailer dealer under Chapter 60, article 14.

(2) Repossession license plates shall be prefixed with a large letter R and be serially numbered from 1 to distinguish them from each other. Such license plates shall be displayed only on the rear of a repossessed motor vehicle or trailer.

Source: Laws 2005, LB 274, § 75.

60-376 Operation of vehicle without registration; In Transit sticker; records required; proof of ownership.

Subject to all the provisions of law relating to motor vehicles and trailers not inconsistent with this section, any motor vehicle dealer or trailer dealer who is regularly engaged within this state in the business of buying and selling motor vehicles and trailers, who regularly maintains within this state an established place of business, and who desires to effect delivery of any motor vehicle or trailer bought or sold by him or her from the point where purchased or sold to points within or outside this state may, solely for the purpose of such delivery

by himself or herself, his or her agent, or a bona fide purchaser, operate such motor vehicle or tow such trailer on the highways of this state without charge or registration of such motor vehicle or trailer. A sticker shall be displayed on the front and rear windows or the rear side windows of such motor vehicle, except a motorcycle, and displayed on the front and rear of each such trailer. On the sticker shall be plainly printed in black letters the words In Transit. One In Transit sticker shall be displayed on a motorcycle, which sticker may be one-half the size required for other motor vehicles. Such stickers shall include a registration number, which registration number shall be different for each sticker or pair of stickers issued, and the contents of such sticker and the numbering system shall be as prescribed by the department. Each dealer issuing such stickers shall keep a record of the registration number of each sticker or pair of stickers on the invoice of such sale. Such sticker shall allow such owner to operate the motor vehicle or tow such trailer for a period of thirty days in order to effect proper registration of the new or used motor vehicle or trailer. When any person, firm, or corporation has had a motor vehicle or trailer previously registered and license plates assigned to such person, firm, or corporation, such owner may operate the motor vehicle or tow such trailer for a period of thirty days in order to effect transfer of plates to the new or used motor vehicle or trailer. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a duly executed bill of sale therefor or other satisfactory evidence of the right of possession by such person of such motor vehicle or trailer.

Source: Laws 2005, LB 274, § 76; Laws 2008, LB756, § 12.
Operative date July 18, 2008.

60-377 Business of equipping, modifying, repairing, or detailing; registration and plates; fee.

Any person, firm, or corporation in this state engaged in the business of equipping, modifying, repairing, or detailing motor vehicles or trailers which are not registered and which are not owned by such person, firm, or corporation shall make an application to the department for a registration certificate and one license plate. Such application shall be accompanied by a fee of thirty dollars. Additional pairs of certificates and license plates may be procured for a fee of thirty dollars each. Such license plates shall be designed by the department and shall bear a mark and be serially numbered so as to be distinguished from each other. Such license plates may be used solely for the purpose of equipping, modifying, repairing, detailing, and delivering such motor vehicles or trailers. Upon demand of proper authorities, the operator of such motor vehicle shall present a written statement from the owner authorizing operation of such motor vehicle or towing such trailer.

Source: Laws 2005, LB 274, § 77.

60-378 Transporter plates; fee; records.

(1) Any transporter doing business in this state may, in lieu of registering each motor vehicle or trailer which such transporter is transporting, upon payment of a fee of ten dollars, apply to the department for a transporter's certificate and one transporter license plate. Additional pairs of transporter certificates and transporter license plates may be procured for a fee of ten dollars each. Transporter license plates shall be displayed (a) upon the motor

vehicle or trailer being transported or (b) upon a properly registered truck or truck-tractor which is a work or service vehicle in the process of towing a trailer which is itself being delivered by the transporter, and such registered truck or truck-tractor shall also display a transporter plate upon the front thereof. The applicant for a transporter plate shall keep for six years a record of each motor vehicle or trailer transported by him or her under this section, and such record shall be available to the department for inspection. Each applicant shall file with the department proof of his or her status as a bona fide transporter.

(2) Transporter license plates may be the same size as license plates issued for motorcycles, shall bear thereon a mark to distinguish them as transporter plates, and shall be serially numbered so as to distinguish them from each other. Such license plates may only be displayed upon the front of a driven motor vehicle of a lawful combination or upon the front of a motor vehicle driven singly or upon the rear of a trailer being towed.

Source: Laws 2005, LB 274, § 78; Laws 2007, LB286, § 32.

60-379 Boat dealer trailer plate; fee.

Any boat dealer when transporting a boat which is part of the inventory of the boat dealer on a trailer required to be registered may annually, in lieu of registering the trailer and upon application to the department and payment of a fee of ten dollars, obtain a certificate and a license plate. The plate may be displayed on any trailer owned by the boat dealer when the trailer is transporting such a boat. The license plate shall be of a type designed by the department and so numbered as to distinguish one plate from another.

Source: Laws 2005, LB 274, § 79.

60-380 Motor vehicle or trailer owned by dealer; presumption.

Any motor vehicle or trailer owned by a dealer licensed under Chapter 60, article 14, and bearing other than dealer license plates shall be conclusively presumed not to be a part of the dealer's inventory and not for demonstration or sale and therefor not eligible for any exemption from taxes or fees applicable to motor vehicles or trailers with dealer license plates.

Source: Laws 2005, LB 274, § 80.

60-381 Manufacturer or dealer; branch offices; separate registration; dealer's plates; use.

Whenever a manufacturer or dealer licensed under Chapter 60, article 14, maintains a branch or subagency, the manufacturer or dealer shall apply for a separate registration for such branch or subagency and shall pay therefor the fees provided in section 60-3,114 for the registration of motor vehicles or trailers owned by or under the control of the manufacturer or dealer, and the determination of the department upon the question whether any establishment constitutes a branch or subagency, within the intent of this section, shall be conclusive. No manufacturer, dealer, or employee of a manufacturer or dealer shall cause or permit the display or other use of any license plate or certificate of registration which has been issued to such manufacturer or dealer except upon motor vehicles or trailers owned by such manufacturer or dealer.

Source: Laws 2005, LB 274, § 81.

60-382 Nonresident owners; temporary permit; application; fee; certificate; contents.

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer or designated county official of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer or designated county official shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer or designated county official, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

Source: Laws 2005, LB 274, § 82.

60-383 Film vehicles; registration; fees.

(1) A film vehicle, subject to approval by the Department of Economic Development, may be registered upon application to the Department of Motor Vehicles. The Department of Motor Vehicles may provide distinctive license plates for such film vehicles. Such license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(2) The registration for film vehicles shall be issued only with the payment of the fees required by section 60-3,102 and this section. The registration shall be valid for six months from the date of issuance and may be renewed for a period not to exceed three months upon payment of the renewal fee specified in this section.

(3) The six-month registration fee for a film vehicle shall be fifty dollars for a film vehicle with a gross vehicle weight of sixteen thousand pounds or less and one hundred fifty dollars for a film vehicle with a gross vehicle weight of more than sixteen thousand pounds. The three-month renewal fee shall be twenty-five dollars. All fees collected by the Department of Motor Vehicles under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2005, LB 274, § 83.

60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or designated county official or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under the provisions of this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 84.

60-385 Application; situs.

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

Source: Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33.

60-386 Application; contents.

Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The form shall also contain a notice that bulk fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing the notice, for supplying the information for motor vehicles to be registered. The county treasurer or designated county official shall include the form in each mailing made pursuant to section 60-3,186. The county treasurer or designated county official or his or her agent shall notify the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue whenever a motor vehicle powered by an alternative fuel is registered. The notification shall include the name and address of the registrant, the date of registration, the type of motor vehicle registered, and the type of alternative fuel used to propel the motor vehicle as indicated on the registration application.

Source: Laws 2005, LB 274, § 86.

60-387 Proof of financial responsibility required.

An application for registration of a motor vehicle shall be accompanied by proof of financial responsibility or evidence of insurance covering the motor vehicle. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the department. Evidence of insurance shall give the effective dates of the automobile liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit description or by appropriate reference, all motor vehicles covered. Evidence of insurance in the form of a certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description. Proof of financial responsibility also may be evidenced by (1) a check by the department or its agents of the motor vehicle insurance data base created under section 60-3,136 or (2) any other automated or electronic means as prescribed or developed by the department. For purposes of this section, fleet means a group of at least five vehicles that belong to the same owner.

Source: Laws 2005, LB 274, § 87; Laws 2007, LB286, § 34.

60-388 Collection of taxes and fees required.

No county treasurer or designated county official shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by the Internal Revenue Code, 26 U.S.C. 4481.

Source: Laws 2005, LB 274, § 88.

60-389 Registration number; assignment.

Upon the filing of such application, the department shall, upon registration, assign to such motor vehicle or trailer a distinctive registration number in the form of a license plate. Upon sale or transfer of any such motor vehicle or trailer, such number may be canceled or may be reassigned to another motor vehicle or trailer, at the option of the department, subject to the provisions of the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 89.

60-390 Certificate of registration; contents.

The certificate of registration shall contain upon the face thereof the name of the registered owner of the motor vehicle or trailer, his or her residential mailing address, a description of the motor vehicle or trailer as set forth in the application for registration, and whether alternative fuel was used to propel the motor vehicle and, if so, the type of fuel. The certificate of registration shall have and contain the identical registration number denoted on the license plate in connection with which such certificate of registration is issued and shall be valid only for the registration period for which it is issued. On the back of the

certificate, the certificate of registration shall include a statement in boldface print that an automobile liability policy or proof of financial responsibility is required in Nebraska. By paying the required registration fees, every person whose name appears on the registration of the motor vehicle or trailer certifies that a current and effective automobile liability policy or proof of financial responsibility will be maintained for the motor vehicle or trailer at the time of registration and while the motor vehicle or trailer is operated on a highway of this state and that he or she will also provide a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility for the motor vehicle or trailer upon demand.

Source: Laws 2005, LB 274, § 90.

60-391 Combined certificate and receipt for fees; county officials; reports; contents.

The county treasurer or designated county official shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer or designated county official shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer or designated county official fails to file such report, the department shall notify the county board of commissioners or supervisors of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

Source: Laws 2005, LB 274, § 91.

60-392 Renewal of registration; license plates; validation decals; registration period; expiration.

(1) Registration may be renewed annually in a manner designated by the department and upon payment of the same fee as provided for the original registration. On making an application for renewal, the registration certificate for the preceding registration period or renewal notice or other evidence designated by the department shall be presented with the application. A person may renew his or her annual registration up to thirty days prior to the date of expiration.

(2) The certificate of registration and license plates issued by the department shall be valid during the registration period for which they are issued, and when validation decals issued pursuant to section 60-3,101 have been affixed to the license plates, the plates shall also be valid for the registration period designated by such validation decals. If a person renews his or her annual registration up to thirty days prior to the date of expiration, the registration shall be valid for such time period as well.

(3) The registration period for motor vehicles and trailers required to be registered as provided in section 60-362 shall expire on the first day of the

month one year from the month of issuance, and renewal shall become due on such day and shall become delinquent on the first day of the following month.

(4) Subsections (1) through (3) of this section do not apply to dealer's license plates, repossession plates, and transporter plates as provided in sections 60-373, 60-375, 60-378, and 60-379, which plates shall be issued for a calendar year.

(5) The registration period for apportioned vehicles as provided in section 60-3,198 shall expire December 31 of each year and shall become delinquent February 1 of the following year.

Source: Laws 2005, LB 274, § 92; Laws 2006, LB 789, § 1.

60-393 Multiple vehicle registration.

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4.
Operative date January 1, 2010.

60-394 Registration; certain name changes; fee.

Registration which is in the name of one spouse may be transferred to the other spouse for a fee of one dollar and fifty cents.

So long as one registered name on a registration of a noncommercial motor vehicle or trailer remains the same, other names may be deleted therefrom or new names added thereto for a fee of one dollar and fifty cents.

Source: Laws 2005, LB 274, § 94.

60-395 Refund or credit of fees; when authorized.

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer or designated county official of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer or designated county official the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or

trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

(a) Upon transfer of ownership of any motor vehicle or trailer;

(b) In case of loss of possession because of fire, theft, dismantlement, or junking;

(c) When a salvage branded certificate of title is issued;

(d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190;

(e) Upon a trade-in or surrender of a motor vehicle under a lease; or

(f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer or designated county official upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) The county treasurer or designated county official shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5.

Note: The changes made by LB 286 became effective September 1, 2007. The changes made by LB 570 became operative January 1, 2010.

60-396 Credit of fees; vehicle disabled or removed from service.

Whenever the registered owner files an application with the county treasurer or designated county official showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer or designated county official of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer or designated county official shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6.
Operative date January 1, 2010.

60-397 Refund or credit; salvage branded certificate of title.

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer or designated county official within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer or designated county official regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner

registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36.

60-398 Nonresident; refund; when allowed.

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer or designated county official, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

Source: Laws 2005, LB 274, § 98.

60-399 Display of plates; requirements.

(1) Except as otherwise specifically provided, no person shall operate or park or cause to be operated or parked a motor vehicle or tow or park or cause to be towed or parked a trailer on the highways unless such motor vehicle or trailer has displayed the proper number of plates as required in the Motor Vehicle Registration Act.

In each registration period in which new license plates are not issued, previously issued license plates shall have affixed thereto the validation decals issued pursuant to section 60-3,101. In all cases such license plates shall be securely fastened in an upright position to the motor vehicle or trailer so as to prevent such plates from swinging and at a minimum distance of twelve inches from the ground to the bottom of the license plate. No person shall attach to or display on such motor vehicle or trailer any (a) license plate or registration certificate other than as assigned to it for the current registration period, (b) fictitious or altered license plates or registration certificate, (c) license plates or registration certificate that has been canceled by the department, or (d) license plates lacking current validation decals.

(2) All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.

Source: Laws 2005, LB 274, § 99.

60-3,100 License plates; issuance.

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, truck-tractors, trailers, buses, and apportionable vehicles. The license plates shall be of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

Source: Laws 2005, LB 274, § 100.

60-3,101 License plates; when issued; validation decals.

Except for license plates issued pursuant to section 60-3,203, license plates shall be issued every six years beginning with the license plates issued in the year 2005. Except for plates issued pursuant to such section, in the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be, which validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

Source: Laws 2005, LB 274, § 101.

60-3,102 Plate fee.

Whenever new license plates, including duplicate or replacement license plates, are issued to any person, a fee per plate shall be charged in addition to all other required fees. The plate fee shall be determined by the department and shall only cover the cost of the license plate and validation decals but shall not exceed three dollars and fifty cents. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2005, LB 274, § 102.

60-3,103 License Plate Cash Fund; created; use; investment.

There is hereby created the License Plate Cash Fund which shall consist of money transferred to it pursuant to section 39-2215. All costs associated with the manufacture of license plates and decals provided for in the Motor Vehicle Registration Act and section 60-1804 shall be paid from funds appropriated from the License Plate Cash Fund. The fund shall be used exclusively for such purposes and shall be administered 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 2005, LB 274, § 103.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,104 Types of license plates.

The department shall issue the following types of license plates:

(1) Amateur radio station license plates issued pursuant to section 60-3,126;

(2) Apportionable vehicle license plates issued pursuant to section 60-3,203;

(3) Boat dealer license plates issued pursuant to section 60-379;

(4) Bus license plates issued pursuant to section 60-3,144;

(5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;

(6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;

(7) Disabled veteran license plates issued pursuant to section 60-3,124;

(8) Farm trailer license plates issued pursuant to section 60-3,151;

(9) Farm truck license plates issued pursuant to section 60-3,146;

(10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;

(11) Fertilizer trailer license plates issued pursuant to section 60-3,151;

(12) Film vehicle license plates issued pursuant to section 60-383;

(13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;

(14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;

(15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;

(16) Local truck license plates issued pursuant to section 60-3,145;

(17) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;

(18) Motor vehicles exempt pursuant to section 60-3,107;

(19) Motorcycle license plates issued pursuant to section 60-3,100;

(20) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;

(21) Nonresident owner thirty-day license plates issued pursuant to section 60-382;

(22) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;

(23) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;

(24) Pearl Harbor license plates issued pursuant to section 60-3,122;

(25) Personal-use dealer license plates issued pursuant to section 60-3,116;

(26) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;

(27) Prisoner-of-war license plates issued pursuant to section 60-3,123;

(28) Purple Heart license plates issued pursuant to section 60-3,125;

(29) Recreational vehicle license plates issued pursuant to section 60-3,151;

(30) Repossession license plates issued pursuant to section 60-375;

(31) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;

(32) Trailer license plates issued pursuant to section 60-3,100;

(33) Trailers exempt pursuant to section 60-3,108;

(34) Transporter license plates issued pursuant to section 60-378;

(35) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;

(36) Utility trailer license plates issued pursuant to section 60-3,151; and

(37) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

Source: Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7.

Note: The changes made by LB 286 became effective September 1, 2007. The changes made by LB 570 became operative January 1, 2010.

60-3,105 Motor vehicles owned or operated by the state, counties, municipalities, or school districts; distinctive plates or undercover license plates.

(1) The department may provide a distinctive license plate for all motor vehicles owned or operated by the state, counties, municipalities, or school districts. Motor vehicles owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any motor vehicle owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

Source: Laws 2005, LB 274, § 105.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

60-3,106 Trailers owned or operated by the state, counties, municipalities, or school districts; distinctive plates.

(1) The department may provide a distinctive license plate for all trailers owned or operated by the state, counties, municipalities, or school districts. Trailers owned or operated by the state, counties, municipalities, or school districts shall display such distinctive license plates when such license plates are issued or shall display undercover license plates when such license plates are issued under section 60-3,135.

(2) Any trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system, and exempt from a distinct marking as provided in section 81-1021, may carry license plates the same design and size as are provided in subsection (1) of this section or undercover license plates issued under section 60-3,135.

Source: Laws 2005, LB 274, § 106.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

60-3,107 Tax-exempt motor vehicles; distinctive plates.

The department may provide distinctive license plates issued for use on motor vehicles which are tax exempt pursuant to subdivision (6) of section 60-3,185. License plates on such motor vehicles shall display, in addition to the license number, the words tax exempt.

Source: Laws 2005, LB 274, § 107; Laws 2007, LB286, § 38.

60-3,108 Tax-exempt trailers; distinctive plates.

The department may provide distinctive license plates issued for use on trailers exempt pursuant to subdivision (6) of section 60-3,185. License plates on such trailers shall display, in addition to the license number, the word exempt which shall appear at the bottom of the license plates.

Source: Laws 2005, LB 274, § 108.

60-3,109 Well-boring apparatus and well-servicing equipment license plates.

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer or designated county official for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

Source: Laws 2005, LB 274, § 109.

60-3,110 Local truck; special permit; fee.

Any owner of a motor vehicle registered as a local truck may make application to the department for a special permit authorizing operation of such local

truck on the highways of this state beyond the limits specified by law for local trucks for the sole purpose of having such truck equipped, modified, or serviced. The operator of the local truck shall have such permit in his or her possession at all times when he or she is operating such local truck beyond the limits specified by law for the local truck and shall display such permit upon demand of proper authorities. The fee for this permit shall be five dollars payable to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 110.

60-3,111 Farmers and ranchers; special permits; fee.

Special permits may be supplied by the department and issued by the county treasurer or designated county official for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections 60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 111.

60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from the county treasurer or designated county official or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 112.

60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,100, 60-3,102, 60-3,185, and 60-3,190, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person as defined in section 18-1738 or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

Beginning January 1, 2005, an application and proof of disability in the form and with the information required by section 18-1738 shall be filed before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates pursuant to this section and all persons who obtain a handicapped or disabled parking permit as described in section 18-1739.

Source: Laws 2005, LB 274, § 113.

60-3,114 Dealer or manufacturer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

Source: Laws 2005, LB 274, § 114.

60-3,115 Additional dealer license plates; unauthorized use; hearing.

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer or designated county official to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

Source: Laws 2005, LB 274, § 115.

60-3,116 Personal-use dealer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer or designated county official of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer licensed pursuant to Chapter 60, article 14.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

Source: Laws 2005, LB 274, § 116.

60-3,117 Surrender of dealer license plates; when.

When any motor vehicle or trailer dealer's or manufacturer's license has been revoked or otherwise terminated, it shall be the duty of such dealer or manufacturer to immediately surrender to the department or to the Nebraska Motor Vehicle Industry Licensing Board any dealer license plates issued to him or her for the current year. Failure of such dealer or manufacturer to immediately surrender such dealer license plates to the department upon demand by the department shall be unlawful.

Source: Laws 2005, LB 274, § 117.

60-3,118 Personalized message license plates; conditions.

(1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message license plates for motor vehicles, trailers, semitrailers, or cabin trailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used, except that for motorcycles, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or cabin trailer is registered. Renewal of a personalized message license plate containing a county prefix

shall be conditioned upon the motor vehicle or cabin trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

Source: Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39.

60-3,119 Personalized message license plates; application; renewal; fee.

(1) Application for personalized message license plates shall be made to the department. The department shall make available through each county treasurer or designated county official forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of thirty dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of thirty dollars. County treasurers or designated county officials collecting fees pursuant to this subsection shall remit them to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 119.

60-3,120 Personalized message license plates; delivery.

When the department approves an application for personalized message license plates, it shall notify the applicant and deliver the license plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is to be registered. The county treasurer or designated county official shall deliver such plates to the applicant, in lieu of regular license plates, when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer.

Source: Laws 2005, LB 274, § 120.

60-3,121 Personalized message license plates; transfer; credit allowed; fee.

(1) The owner of a motor vehicle or cabin trailer bearing personalized message license plates may make application to the county treasurer or designated county official to have such license plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such license plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the license plates.

(2) The owner may have the unused portion of the message plate fee credited to the other motor vehicle or cabin trailer which will bear the license plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 121.

60-3,122 Pearl Harbor plates; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40.

60-3,122.01 Gold Star Family plates; design requirements.

(1) The department shall design license plates to be known as Gold Star Family plates. The department shall create designs reflecting support for those who died while serving in good standing in the United States Armed Forces in consultation with the Department of Veterans' Affairs and the Military Department. The Department of Veterans' Affairs shall recommend the design of the plate to the Department of Motor Vehicles. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.02.

(2) One type of Gold Star Family plate shall be consecutively numbered plates. The department shall:

(a) Number the plates consecutively beginning with the number one, using numerals the size of which maximizes legibility and limiting the numerals to five characters or less; and

(b) Not use a county designation or any characters other than numbers on the plates.

(3) One type of Gold Star Family plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

Source: Laws 2007, LB570, § 2.
Operative date January 1, 2010.

60-3,122.02 Gold Star Family plates; fee.

(1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or cabin trailer, except for a commercial truck. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers or designated county officials. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States. Only one motor vehicle or trailer owned by the applicant shall be so licensed at any one time.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of fifteen dollars. An application for renewal of such plates shall be accompanied by a fee of fifteen dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and ten dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit thirty dollars of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and ten dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue Gold

Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer or designated county official to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3.
Operative date January 1, 2010.

60-3,123 Prisoner of war plates; fee.

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by an applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41.

60-3,124 Disabled veteran plates; fee.

(1) Any person who is a veteran of the United States Armed Forces, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who is classified by the United States

Department of Veterans Affairs as one hundred percent service-connected disabled may, in addition to the application required in section 60-385, apply to the Department of Motor Vehicles for license plates designed by the department to indicate that the applicant is a disabled veteran. The inscription on the license plates shall be D.A.V. immediately below the license plate number to indicate that the holder of the license plates is a disabled veteran.

(2) The plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant is a disabled veteran. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

Source: Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42.

60-3,125 Purple Heart plates; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was awarded the Purple Heart. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43.

60-3,126 Amateur radio station license plates; fee; renewal.

(1) Any person who holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission and is the owner of a motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the application required by section 60-385, apply to the department for license plates upon which shall be inscribed the official amateur radio call letters of such applicant.

(2) Such license plates shall be issued, in lieu of the usual numbers and letters, to such an applicant upon payment of the regular license fee and the payment of an additional fee of five dollars and furnishing proof that the applicant holds such an unrevoked and unexpired amateur radio station li-

cense. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one such motor vehicle or trailer owned by an applicant shall be so registered at any one time.

(3) An applicant applying for renewal of amateur radio station license plates shall again furnish proof that he or she holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission.

(4) The department shall prescribe the size and design of the license plates and furnish such plates to the persons applying for and entitled to the same upon the payment of the required fee.

Source: Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44.

60-3,127 Nebraska Cornhusker Spirit Plates; design requirements.

(1) The department, in designing Nebraska Cornhusker Spirit Plates, shall:

(a) Include the word Cornhuskers or Huskers prominently in the design;

(b) Use scarlet and cream colors in the design or such other similar colors as the department determines to best represent the official team colors of the University of Nebraska Cornhuskers athletic programs and to provide suitable reflection and contrast;

(c) Use cream or a similar color for the background of the design and scarlet or a similar color for the printing; and

(d) Create a design reflecting support for the University of Nebraska Cornhuskers athletic programs in consultation with the University of Nebraska-Lincoln Athletic Department. The design shall be selected on the basis of (i) enhancing the marketability of spirit plates to supporters of University of Nebraska Cornhuskers athletic programs and (ii) limiting the manufacturing cost of each spirit plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102.

(2) One type of Nebraska Cornhusker Spirit Plates shall be consecutively numbered spirit plates. The department shall:

(a) Number the spirit plates consecutively beginning with the number one, using numerals the size of which maximizes legibility; and

(b) Not use a county designation or any characters other than numbers on the spirit plates.

(3) One type of Nebraska Cornhusker Spirit Plates shall be personalized message spirit plates. Such plates shall be issued subject to the same conditions specified for message plates in subsection (2) of section 60-3,118. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used.

Source: Laws 2005, LB 274, § 127.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed.

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198.

An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers or designated county officials. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund and fifty-seven percent of the fees to the Spirit Plate Proceeds Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer or designated county official to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45.

60-3,129 Spirit Plate Proceeds Fund; created; use; investment.

(1) The Spirit Plate Proceeds 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.

(2) If the cost of manufacturing Nebraska Cornhusker Spirit Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Spirit Plate Proceeds Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of such spirit plates and the amount charged pursuant to such section with respect to such spirit plates and the remainder shall be credited to the Spirit Plate Proceeds Fund.

(3) The first three million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support to former University of Nebraska athletes to pursue undergraduate and

postgraduate studies at any University of Nebraska campus. Funds appropriated by the Legislature for such scholarship program shall be held, managed, and invested as an endowed scholarship fund in such manner as the Board of Regents of the University of Nebraska shall determine and as authorized by section 72-1246. The income from the endowed scholarship fund shall be expended for such scholarships. The University of Nebraska shall grant financial support to former athletes who demonstrate financial need as determined by the Federal Pell Grant Program or similar need-based qualifications as approved by the financial aid office of the appropriate campus.

(4) The next two million dollars credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund shall be appropriated to the University of Nebraska to establish an endowment fund to provide financial support for the academic service units of the athletic departments of the campuses of the University of Nebraska in support of academic services to athletes.

(5) Any money credited to the Spirit Plate Proceeds Fund and not credited to the Highway Trust Fund after the first five million dollars shall be divided equally between the campuses of the state college system and the University of Nebraska for the repair, maintenance, upkeep, and improvement of facilities at any campus, except that the first ten percent of the amount over five million dollars shall be credited to the endowment fund created in subsection (3) of this section.

Source: Laws 2005, LB 274, § 129.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,130 Historical license plates; conditions.

(1) Except as provided in section 60-3,134, a person presenting a certificate of title issued pursuant to section 60-142.01 or 60-142.02 or a certificate of title indicating that the vehicle is thirty or more years old may apply for historical license plates or may use license plates of the year of manufacture in lieu of regular license plates as provided in sections 60-3,130 to 60-3,134.

(2) Each collector applying for such license plates, other than a nonprofit organization described in sections 21-608 and 21-609, must own and have registered one or more motor vehicles with regular license plates which he or she uses for regular transportation.

(3) A motor vehicle or trailer manufactured, assembled from a kit, or otherwise assembled as a reproduction or facsimile of a historical vehicle shall not be eligible for historical license plates unless it has been in existence for thirty years or more. The age of the motor vehicle or trailer shall be calculated from the year reflected on the certificate of title.

Source: Laws 2005, LB 274, § 130; Laws 2006, LB 663, § 24.

60-3,130.01 Historical license plates; application; form; contents.

The application under section 60-3,130 shall be made on a form prescribed and furnished by the department. The form shall contain (1) a description of the vehicle owned and sought to be registered, including the make, body type, model, vehicle identification number, and year of manufacture, (2) a descrip-

tion of any vehicle owned by the applicant and registered by him or her with regular license plates and used for regular transportation, which description shall include make, body type, model, vehicle identification number, year of manufacture, and the Nebraska registration number assigned to the vehicle, and (3) an affidavit sworn to by the vehicle owner that the historical vehicle is being collected, preserved, restored, and maintained by the applicant as a hobby and not for the general use of the vehicle for the same purposes and under the same circumstances as other motor vehicles of the same type.

Source: Laws 2006, LB 663, § 25.

60-3,130.02 Historical license plates; fees.

(1) An initial processing fee of ten dollars shall be submitted with an application under section 60-3,130 to defray the costs of issuing the first plate to each collector and to establish a distinct identification number for each collector. A fee of fifty dollars for each vehicle so registered shall also be submitted with the application.

(2) For use of license plates as provided in section 60-3,130.04, a fee of twenty-five dollars shall be submitted with the application in addition to the fees specified in subsection (1) of this section.

(3) The fees shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2006, LB 663, § 26.

60-3,130.03 Historical license plates; department; powers and duties.

The department shall design historical license plates with a distinctive design which, in addition to the identification number, includes the words historical and Nebraska for identification. The department may adopt and promulgate rules and regulations to implement sections 60-3,130 to 60-3,134.

Source: Laws 2006, LB 663, § 27.

60-3,130.04 Historical vehicle; model-year license plates; authorized.

(1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, or handicapped or disabled person license plates.

Source: Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46.

60-3,130.05 Historical license plates; model-year license plates; validity.

License plates issued or used pursuant to section 60-3,130 or 60-3,130.04 shall be valid while the vehicle is owned by the applicant without the payment of any additional fee, tax, or license.

Source: Laws 2006, LB 663, § 29.

60-3,130.06 Historical vehicle; transfer of registration and license plates; authorized; fee.

A collector, upon loss of possession of a historical vehicle registered pursuant to section 60-3,130, may have the registration and license plate transferred to another vehicle in his or her possession, which is eligible for such registration, upon payment of a fee of twenty-five dollars. The fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2006, LB 663, § 30.

60-3,130.07 Historical vehicles; registered and licensed on August 24, 1975; how treated.

Collectors who, on August 24, 1975, had vehicles registered and licensed as historical vehicles shall be permitted to retain such registration and license if the collector submits an affidavit to the department sworn to by the vehicle owner that the vehicle is being collected, preserved, restored, and maintained as a hobby and not for the general use of the vehicle.

Source: Laws 2006, LB 663, § 31.

60-3,131 Historical vehicles; use.

(1) Except as otherwise provided in subsection (2) of this section, historical vehicles may be used for hobby pursuits but shall not be used for the same purposes and under the same conditions as other motor vehicles or trailers of the same type, and under ordinary circumstances, such historical vehicles shall not be used to transport passengers for hire. Any such historical vehicle shall not be used for business or occupation or regularly for transportation to and from work, and may be driven on the public streets and roads only for servicing, test drives, public displays, parades, and related pleasure or hobby activities.

(2) For special events that are sponsored or in which participation is by organized clubs such historical vehicles may:

(a) Transport passengers for hire only if any money received is to be used for club activities or to be donated to a charitable nonprofit organization; and

(b) Haul other vehicles to and from such special event.

Source: Laws 2005, LB 274, § 131; Laws 2006, LB 815, § 1.

60-3,132 Historical vehicles; storage; conditions.

Subject to land-use regulations of a county or municipality, a collector may store any motor vehicles, trailers, or parts vehicles, licensed or unlicensed, operable or inoperable, on his or her property if such motor vehicles, trailers, and parts vehicles and any outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and if the motor vehicles, trailers, and parts vehicles are located away from ordinary public view or are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, opaque covering, or other appropriate means.

Source: Laws 2005, LB 274, § 132; Laws 2006, LB 663, § 32.

60-3,133 Historical vehicles; emission controls; exempt, when; safety equipment; proper operating condition.

(1) Unless the presence of equipment specifically named by Nebraska law was a prior condition for legal sale within Nebraska at the time a specific model of historical vehicle was manufactured for first use, the presence of such equipment shall not be required as a condition for use of any such model of historical vehicle as authorized in section 60-3,131.

(2) Any historical vehicle manufactured prior to the date emission controls were standard equipment on that particular make or model of historical vehicle is exempted from statutes requiring the inspection and use of such emission controls.

(3) Any safety equipment that was manufactured as part of the historical vehicle's original equipment must be in proper operating condition.

Source: Laws 2005, LB 274, § 133; Laws 2006, LB 663, § 33.

60-3,134 Historical vehicle; registered with regular license plates; when.

Any motor vehicle or trailer that qualifies as an historical vehicle which is used for the same general purposes and under the same conditions as motor vehicles or trailers registered with regular license plates shall be required to be registered with regular license plates, regardless of its age, and shall be subject to the payment of the same taxes and fees required of motor vehicles or trailers registered with regular license plates.

Source: Laws 2005, LB 274, § 134.

60-3,135 Undercover license plates; issuance; confidential.

(1)(a) Undercover license plates may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes.

Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.

(b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.

(4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.

(5) The contact person shall return the undercover license plates to the department if:

(a) The undercover license plates expire and are not renewed;

(b) The purpose for which the undercover license plates were issued has been completed or terminated; or

(c) The director requests their return.

(6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure.

Source: Laws 2005, LB 274, § 135; Laws 2007, LB296, § 227.

60-3,136 Motor vehicle insurance data base; created; powers and duties; Motor Vehicle Insurance Data Base Task Force; created.

(1)(a) The motor vehicle insurance data base is created. The department shall develop and administer the motor vehicle insurance data base which shall include the information provided by insurance companies as required by the department pursuant to sections 60-3,136 to 60-3,139. The motor vehicle insurance data base shall be used to facilitate registration of motor vehicles in this state by the department and its agents. The director may contract with a designated agent for the purpose of establishing and operating the motor vehicle insurance data base and monitoring compliance with the financial responsibility requirements of such sections. The department shall implement the motor vehicle insurance data base no later than July 1, 2004. The director shall designate the date for the department's implementation of the motor vehicle insurance data base.

(b) The department may adopt and promulgate rules and regulations to carry out sections 60-3,136 to 60-3,139. The rules and regulations shall include specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base, and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base, as recommended by the Motor Vehicle Insurance Data Base Task Force created in subsection (2) of this section in its report to the department.

(2)(a) The Motor Vehicle Insurance Data Base Task Force is created. The Motor Vehicle Insurance Data Base Task Force shall investigate the best practices of the industry and recommend specifications for the information to be transmitted by the insurance companies to the department for inclusion in the motor vehicle insurance data base and specifications for the form and manner of transmission of data for inclusion in the motor vehicle insurance data base.

(b) The Motor Vehicle Insurance Data Base Task Force shall consist of:

(i) The Director of Motor Vehicles or his or her designee;

(ii) The Director of Insurance or his or her designee;

(iii) The following members who shall be selected by the Director of Insurance:

(A) One representative of a domestic automobile insurance company or domestic automobile insurance companies;

(B) One representative of an admitted foreign automobile insurance company or admitted foreign automobile insurance companies; and

(C) One representative of insurance producers licensed under the laws of this state; and

(iv) Four members to be selected by the Director of Motor Vehicles.

(c) The requirements of this subsection shall expire on July 1, 2004, except that the director may reconvene the task force at any time thereafter if he or she deems it necessary.

Source: Laws 2005, LB 274, § 136.

60-3,137 Motor vehicle insurance data base; information required.

Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the

motor vehicle insurance data base in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-348 to 75-358 or 75-392 to 75-399 shall not be required to provide information to the department for inclusion in the motor vehicle insurance data base.

Source: Laws 2005, LB 274, § 137; Laws 2007, LB358, § 9.

60-3,138 Motor vehicle insurance data base; information; restrictions.

Information provided to the department by insurance companies for inclusion in the motor vehicle insurance data base created under section 60-3,136 is the property of the insurance company and the department, as the case may be. The department may disclose whether an individual has the required insurance coverage pursuant to the Uniform Motor Vehicle Records Disclosure Act, but in no case shall the department provide any person's insurance coverage information for purposes of resale, for purposes of solicitation, or as bulk listings.

Source: Laws 2005, LB 274, § 138.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,139 Motor vehicle insurance data base; immunity.

(1) The state shall not be liable to any person for gathering, managing, or using information in the motor vehicle insurance data base created under section 60-3,136.

(2) No insurance company shall be liable to any person for performing its duties under sections 60-3,136 to 60-3,138, unless and to the extent the insurance company commits a willful and wanton act or omission.

Source: Laws 2005, LB 274, § 139.

60-3,140 Registration fees; to whom payable.

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

Source: Laws 2005, LB 274, § 140.

60-3,141 Agents of department; fees; collection.

(1) The various county treasurers or designated county officials shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers or designated county officials shall in addition to the taxes and registration fees collect and retain for the county two dollars for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and five dollars for each registration of a motor vehicle or trailer of a nonresident from the funds collected for the registration issued. Such fees collected by the county shall be remitted to the county treasurer for credit to the county general fund.

(3) The county treasurers or designated county officials shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer or designated county official who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

Source: Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47.

60-3,142 Fees; retention by county.

The various county treasurers or designated county officials acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112. The five percent shall be remitted to the county treasurer for credit to the county general fund.

Source: Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48.

60-3,143 Passenger motor vehicle; leased motor vehicle; registration fee.

(1) For every motor vehicle of ten-passenger capacity or less and not used for hire, the registration fee shall be fifteen dollars.

(2) For each motor vehicle having a seating capacity of ten persons or less and used for hire, the registration fee shall be six dollars plus an additional four dollars for every person such motor vehicle is equipped to carry in addition to the driver.

(3) For motor vehicles leased for hire when no driver or chauffeur is furnished by the lessor as part of the consideration paid for by the lessee, incident to the operation of the leased motor vehicle, the fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 143.

60-3,144 Buses; registration fees.

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer or designated county official. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

Source: Laws 2005, LB 274, § 144.

60-3,145 Local trucks; registration fees.

(1) The registration fee on local trucks shall be based on the gross vehicle weight as provided in section 60-3,147, and local trucks shall be registered at a fee of thirty percent of the commercial motor vehicle registration fee, except that (a) no local truck shall be registered for a fee of less than eighteen dollars, (b) the registration fee for each truck with a factory-rated capacity of one ton or less shall be eighteen dollars, and (c) commercial pickup trucks with a gross load of over three tons shall be registered for the fee provided for commercial motor vehicles.

(2) Local truck license plates shall display, in addition to the registration number, the designation of local motor vehicles.

Source: Laws 2005, LB 274, § 145; Laws 2007, LB286, § 49.

60-3,146 Farm trucks; registration fees.

(1) For the registration of farm trucks, except for trucks or combinations of trucks or truck-tractors and trailers having a gross vehicle weight exceeding sixteen tons, the registration fee shall be eighteen dollars for up to and including five tons gross vehicle weight, and in excess of five tons the fee shall be twenty-two dollars.

(2) For a truck or a combination of a truck or truck-tractor and trailer weighing in excess of sixteen tons registered as a farm truck, except as provided in sections 60-3,111 and 60-3,151, the registration fee shall be based upon the gross vehicle weight. The registration fee on such trucks weighing in excess of sixteen tons shall be at the following rates: For a gross weight in excess of sixteen tons up to and including twenty tons, forty dollars plus five dollars for each ton of gross weight over seventeen tons, and for gross weight exceeding

twenty tons, sixty-five dollars plus ten dollars for each ton of gross weight over twenty tons.

(3) Farm truck license plates shall display, in addition to the registration number, the designation farm and the words NOT FOR HIRE.

(4) Farm trucks with a gross weight of over sixteen tons license plates shall also display the weight that such farm truck is licensed for, using a decal on the license plates in letters and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 146.

60-3,147 Commercial motor vehicles; registration fees.

(1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars;

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer or designated county official shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer or designated county official.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50.

60-3,148 Commercial motor vehicle; increase of gross vehicle weight; where allowed.

No owner of a commercial motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle is registered except at the office of the county treasurer or designated county official in the county where such commercial motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

Source: Laws 2005, LB 274, § 148.

60-3,149 Soil and water conservation vehicles; registration fee.

(1) For the registration of trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction, the registration fee shall be one-half of the rate for similar commercial motor vehicles registered under section 60-3,147, except that no commercial motor vehicle or commercial trailer registered under this section shall be registered for a fee of less than eighteen dollars.

(2) Such license plates shall display, in addition to the registration number, the letter A.

Source: Laws 2005, LB 274, § 149.

60-3,150 Truck-tractor and semitrailer; commercial trailer; registration fee.

For registration purposes, a truck-tractor and semitrailer unit and a commercial trailer shall be considered as separate units. The registration fee of the truck-tractor shall be the fee provided for commercial motor vehicles. Each semitrailer and each commercial trailer shall be registered upon the payment of a fee of one dollar. The department shall provide an appropriate license plate or, when appropriate, validation decal to identify such semitrailers. If any truck or truck-tractor, operated under the classification designated as local, farm, or A or with plates issued under section 60-3,113 is operated outside of the limits of its respective classification, it shall thereupon come under the classification of commercial motor vehicle.

Source: Laws 2005, LB 274, § 150; Laws 2007, LB286, § 51.

60-3,151 Trailers; recreational vehicles; registration fee.

(1) For the registration of any commercial trailer or semitrailer, the fee shall be one dollar.

(2) The fee for utility trailers shall be one dollar for each one thousand pounds gross vehicle weight or fraction thereof, up to and including nine thousand pounds. Utility trailer license plates shall display, in addition to the registration number, the letter X. Trailers other than farm trailers of more than nine thousand pounds must be registered as commercial trailers.

(3) The fee for cabin trailers having gross vehicle weight of one thousand pounds or less shall be nine dollars and more than one thousand pounds, but less than two thousand pounds, shall be twelve dollars. Cabin trailers having a gross vehicle weight of two thousand pounds or more shall be registered for a fee of fifteen dollars.

(4) Recreational vehicles having a gross vehicle weight of eight thousand pounds or less shall be registered for a fee of eighteen dollars, those having a gross vehicle weight of more than eight thousand pounds but less than twelve thousand pounds shall be registered for thirty dollars, and those having a gross vehicle weight of twelve thousand pounds or over shall be registered for forty-two dollars. When living quarters are added to a registered truck, a recreational vehicle registration may be obtained without surrender of the truck registration, in which event both the truck and recreational vehicle license plates shall be displayed on the vehicle. Recreational vehicle license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

(5) Farm trailers shall be licensed for a fee of one dollar, except that when a farm trailer is used with a registered farm truck, such farm trailer may, at the option of the owner, be registered as a separate unit for a fee of three dollars per ton gross vehicle weight and, if so registered, shall not be considered a truck and trailer combination for purposes of sections 60-3,145 and 60-3,146. Farm trailer license plates shall display, in addition to the registration number, the letter X.

(6) Fertilizer trailers shall be registered for a fee of one dollar. Fertilizer trailer license plates shall display, in addition to the registration number, the letter X.

(7) Trailers used to haul poles and cable reels owned and operated exclusively by public utility companies shall be licensed at a fee based on two dollars for

each one-thousand-pound load to be hauled or any fraction thereof, and such load shall not exceed sixteen thousand pounds.

Source: Laws 2005, LB 274, § 151.

60-3,152 Ambulances; hearses; registration fee.

For all ambulances, except publicly owned ambulances, and hearses, the registration fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 152.

60-3,153 Motorcycle; registration fee.

For the registration of every motorcycle, the fee shall be six dollars.

Source: Laws 2005, LB 274, § 153.

60-3,154 Taxicabs; registration fee.

For taxicabs, used for hire, duly licensed by the governing authorities of cities and villages, the registration fee shall be fifteen dollars.

Source: Laws 2005, LB 274, § 154.

60-3,155 Well-boring apparatus and well-servicing equipment; registration fee.

For the registration of well-boring apparatus and well-servicing equipment, the registration fee shall be one-twelfth of the regular commercial registration fee as determined by gross vehicle weight. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 155.

60-3,156 Additional fees.

In addition to the registration fees for motor vehicles and trailers, the county treasurer or designated county official or his or her agent shall collect:

(1) One dollar and fifty cents for each certificate issued and shall remit one dollar and fifty cents of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund;

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund; and

(4) For the period January 1, 2003, through December 31, 2005, twenty-five cents for each certificate issued to pay for the costs of the motor vehicle insurance data base created under section 60-3,136 and shall remit such additional fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 156.

60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer or designated county official for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate.

Source: Laws 2005, LB 274, § 157.

60-3,158 Methods of payment authorized.

A county treasurer or designated county official or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

Source: Laws 2005, LB 274, § 158.

60-3,159 Registration fees; fees for previous years.

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer or designated county official an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer or designated county official shall issue a registration certificate.

Source: Laws 2005, LB 274, § 159.

60-3,160 Governmental vehicle; exempt from fee.

No registration fee shall be charged for any motor vehicle or trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system.

Source: Laws 2005, LB 274, § 160.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

60-3,161 Registration; records; copy or extract provided; electronic access; fee.

(1) The department shall keep a record of each motor vehicle and trailer registered, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle and trailer. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle or trailer to any person after receiving from the person the name on the registration, the license plate number, the vehicle identification number, or the title number of a motor vehicle or trailer, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the entire file of motor vehicles and trailers registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle or trailer registration or title maintained by the department pursuant to this section may be made available electronically through the gateway or electronic network established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records. For batch requests for multiple motor vehicle or trailer title and registration records selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records and a fee of eighteen dollars per one thousand records for any number of records over two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the gateway shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13.
Operative date July 18, 2008.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,162 Certificate of registration; illegal issuance; revocation.

The department shall, upon a sworn complaint in writing of any person, investigate whether a certificate of registration has been issued on a motor vehicle or trailer exceeding the length, height, or width provided by law or issued contrary to any law of this state. If the department determines from the investigation that such certificate of registration has been illegally issued, it shall have power to revoke such certificate of registration.

Source: Laws 2005, LB 274, § 162.

60-3,163 Registration certificate; outstanding warrant for arrest; refusal of issuance; courts; duties.

No motor vehicle or trailer may be registered in the State of Nebraska when there is an outstanding warrant for the arrest of the owner thereof issued out of any court located within this state and such warrant arises out of an alleged violation of a state statute or municipal ordinance involving the use of a motor vehicle or trailer. Each court in the state shall, on or before the fifth day of each month, submit to the county treasurer or designated county official of the

county in which the court is located an alphabetized list of all persons against whom such warrants exist for the preceding month.

Source: Laws 2005, LB 274, § 163.

60-3,164 Operation or parking of unregistered vehicle; penalty.

(1) Any person who operates or parks a motor vehicle or who tows or parks a trailer on any highway, which motor vehicle or trailer has not been registered as required by section 60-362, shall be subject to the penalty provided in section 60-3,170.

(2) A person who parks a motor vehicle or tows a trailer on any highway, which motor vehicle or trailer has been properly registered in this state but such registration has expired, shall not be in violation of this section or section 60-362 or subject to the penalty provided in section 60-3,170, unless thirty days have passed from the expiration of the prior registration.

Source: Laws 2005, LB 274, § 164.

60-3,165 Registration; noncompliance; citation; effect.

If a citation is issued to an owner or operator of a motor vehicle or trailer for a violation of section 60-362 and the owner properly registers and licenses the motor vehicle or trailer not in compliance and pays all taxes and fees due and the owner or operator provides proof of such registration to the prosecuting attorney within ten days after the issuance of the citation, no prosecution for the offense cited shall occur.

Source: Laws 2005, LB 274, § 165.

60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer or designated county official any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

Source: Laws 2005, LB 274, § 166.

60-3,167 Financial responsibility; owner; requirements; prohibited acts; violation; penalty; dismissal of citation; when.

(1) It shall be unlawful for any owner of a motor vehicle or trailer which is being operated or towed with In Transit stickers pursuant to section 60-376, which is being operated or towed pursuant to section 60-365 or 60-369, or which is required to be registered in this state and which is operated or towed on a public highway of this state to allow the operation or towing of the motor vehicle or trailer on a public highway of this state without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility. The owner shall be presumed to know of the operation or towing of his or her motor vehicle or trailer on a highway of this state in violation of

this section when the motor vehicle or trailer is being operated or towed by a person other than the owner. An owner of a motor vehicle or trailer who operates or tows the motor vehicle or trailer or allows the operation or towing of the motor vehicle or trailer in violation of this section shall be guilty of a Class II misdemeanor and shall be advised by the court that his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates will be suspended by the department until he or she complies with sections 60-505.02 and 60-528. Upon conviction the owner shall have his or her motor vehicle operator's license, motor vehicle certificate of registration, and license plates suspended by the department until he or she complies with sections 60-505.02 and 60-528. The owner shall also be required to comply with section 60-528 for a continuous period of three years after the violation. This subsection shall not apply to motor vehicles or trailers registered in another state.

(2) An owner who is unable to produce a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility upon the request of a law enforcement officer shall be allowed ten days after the date of the request to produce proof to the appropriate prosecutor or county attorney that a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time of such request. Upon presentation of such proof, the citation shall be dismissed by the prosecutor or county attorney without cost to the owner and no prosecution for the offense cited shall occur.

(3) The department shall, for any person convicted for a violation of this section, reinstate such person's operator's license, motor vehicle certificate of registration, and license plates and rescind any order requiring such person to comply with section 60-528 without cost to such person upon presentation to the director that, at the time such person was cited for a violation of this section, a current and effective automobile liability policy or proof of financial responsibility was in existence for the motor vehicle or trailer at the time the citation was issued.

Source: Laws 2005, LB 274, § 167.

60-3,168 Proof of financial responsibility required; violation; penalty.

It shall be unlawful for any owner to pay the required registration fees when the owner does not, at the time of paying the fees or during the entire registration period, have or keep in effect a current and effective automobile liability policy or proof of financial responsibility. Any person violating this section shall be guilty of a Class IV misdemeanor. The penalty shall be mandatory and shall not be suspended by a court.

Source: Laws 2005, LB 274, § 168.

60-3,169 Farm truck; unauthorized use; penalty.

Any person using a truck or combination of a truck or truck-tractor and trailer registered as a farm truck pursuant to section 60-3,146 in violation of the uses authorized shall be guilty of a Class IV misdemeanor and shall be required to register such truck or combination of a truck or truck-tractor and trailer as a commercial motor vehicle or commercial trailer for the entire registration period in which the violation occurred.

Source: Laws 2005, LB 274, § 169.

60-3,170 Violations; penalty.

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the Motor Vehicle Registration Act for which a penalty is not otherwise provided shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 170.

60-3,171 Fraud; penalty.

Any person who registers or causes to be registered any motor vehicle or trailer in the name of any person other than the owner thereof, who gives a false or fictitious name or false or fictitious residential and mailing address of the registrant, or who gives false information pursuant to section 60-386 in any application for registration of a motor vehicle or trailer shall be deemed guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 171.

60-3,172 Registration in incorrect county; penalty.

Any person applying for a motor vehicle or trailer registration in any county or location other than that specified in section 60-385 or 60-3,198 shall be deemed guilty of a Class IV misdemeanor.

Source: Laws 2005, LB 274, § 172.

60-3,173 Commercial trucks and truck-tractors; commercial vehicles; prohibited acts; penalty.

Any person who fails to return a registration certificate and license plate when required to do so under subdivision (5)(b) of section 60-3,147 and any person, firm, association, or corporation who otherwise violates section 60-3,147 or 60-3,148 shall be guilty of a Class IV misdemeanor.

Source: Laws 2005, LB 274, § 173.

60-3,174 Well-boring apparatus and well-servicing equipment; prohibited acts; penalty.

Any person using a motor vehicle or trailer registered as well-boring apparatus and well-servicing equipment for any purpose other than that for which the special equipment license plate was issued shall be guilty of a Class IV misdemeanor and shall be required to register such motor vehicle or trailer as a commercial motor vehicle or commercial trailer for the entire year in which the violation occurred.

Source: Laws 2005, LB 274, § 174.

60-3,175 Historical vehicles; prohibited acts; penalty.

It shall be unlawful to own or operate a motor vehicle or trailer with historical license plates in violation of section 60-3,130, 60-3,131, or 60-3,134. Upon conviction of a violation of any provision of such sections, a person shall be guilty of a Class V misdemeanor.

Source: Laws 2005, LB 274, § 175; Laws 2006, LB 663, § 34.

60-3,176 Undercover plates; prohibited acts; penalty.

Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 176.

60-3,177 Nonresident vehicles; prohibited acts.

It shall be unlawful to operate trucks, truck-tractors, trailers, or buses owned by nonresidents who are not in compliance with sections 60-3,178 to 60-3,182 or any agreement executed under the authority granted in sections 60-3,180 to 60-3,182.

Source: Laws 2005, LB 274, § 177.

60-3,178 Nonresident vehicles; requirements; exception; reciprocity.

Trucks, truck-tractors, trailers, or buses, from a jurisdiction other than Nebraska, entering Nebraska shall be required to comply with all the laws and regulations of any nature imposed on Nebraska trucks, truck-tractors, trailers, or buses unless the jurisdiction in which such trucks, truck-tractors, trailers, or buses are domiciled grants reciprocity comparable to that extended by the laws of Nebraska.

Source: Laws 2005, LB 274, § 178.

60-3,179 Nonresident vehicles; nonreciprocal jurisdiction; fees.

In case a jurisdiction is not reciprocal as to license fees on trucks, truck-tractors, trailers, or buses, the owners of nonresident trucks, truck-tractors, trailers, or buses from those jurisdictions shall pay the same license fees as are charged residents of this state. The owners of all trucks, truck-tractors, trailers, or buses from other jurisdictions doing intrajurisdiction hauling in this state shall pay the same registration fees as those paid by residents of this state unless such trucks, truck-tractors, trailers, or buses are registered as a part of a fleet in interjurisdiction commerce as provided in section 60-3,198.

Source: Laws 2005, LB 274, § 179.

60-3,180 Nonresident vehicles; reciprocal agreements authorized; terms and conditions; revision; absence of agreement; effect.

(1) In order to effect the purposes of sections 60-3,178, 60-3,179, and 60-3,198, the director shall have the power, duty, and authority to enter into reciprocal agreements with the duly authorized representatives of other jurisdictions, including states, districts, territories, or possessions of the United States and foreign countries, states, or provinces, granting to trucks, truck-tractors, trailers, or buses or owners of trucks, truck-tractors, trailers, or buses which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any fees or other charges imposed upon such trucks, truck-tractors, trailers, or buses or owners with respect to the operation or ownership of such trucks, truck-tractors, trailers, or buses under the laws of this state. Such agreements or arrangements shall provide that trucks, truck-tractors, trailers, or buses registered or licensed in this state when operated upon the highways of such other jurisdictions shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are

extended to trucks, truck-tractors, trailers, or buses from such jurisdictions in this state. Such agreements may be revised or replaced by new agreements from time to time in order to promote greater uniformity among the jurisdictions. The director may withdraw from any agreement when he or she determines that it is for the best interest of the State of Nebraska upon thirty days' notice.

(2) Notwithstanding any provisions of the Nebraska statutes to the contrary or inconsistent herewith, such agreements may provide, with respect to resident or nonresident fleets of apportionable vehicles which are engaged in interjurisdiction and intrajurisdiction commerce, that the registrations of such fleets can be apportioned between this state and other jurisdictions in which such fleets operate in accordance with the method set out in section 60-3,198. A Nebraska-based fleet owner may include trucks, truck-tractors, trailers, and buses in such apportionable fleet by listing them in an application filed pursuant to section 60-3,198, and any trucks, truck-tractors, trailers, and buses so included shall be eligible for permanent license plates issued pursuant to section 60-3,203. The registration procedure required by section 60-3,198 shall be the only such registration required, and when the fees required by such section and section 60-3,203 if applicable have been paid, the trucks, truck-tractors, trailers, and buses listed on the application shall be duly registered as part of such Nebraska-based fleet and shall be considered part of a Nebraska-based fleet for purposes of taxation.

(3) In the absence of an agreement or arrangement with any jurisdiction, the director is authorized to examine the laws and requirements of such jurisdiction and to declare the extent and nature of exemptions, benefits, and privileges to be extended to trucks, truck-tractors, trailers, and buses registered in such jurisdiction or to the owners or operators of such trucks, truck-tractors, trailers, and buses.

When no written agreement or arrangement has been entered into with another jurisdiction or declaration issued pertaining thereto, any trucks, truck-tractors, trailers, and buses properly registered in such jurisdiction, and for which evidence of compliance is supplied, may be operated in this state and shall receive the same exemptions, benefits, and privileges granted by such other jurisdiction to trucks, truck-tractors, trailers, and buses registered in this state.

Source: Laws 2005, LB 274, § 180.

60-3,181 Truck, truck-tractor, trailer, or bus; no additional registration or license fees required; when.

(1) When a truck, truck-tractor, trailer, or bus has been duly registered in any jurisdiction, including those that are part of a Nebraska-based fleet registered pursuant to section 60-3,198, no additional registration or license fees, except as provided in section 60-3,203 if applicable, shall be required in this state when such truck, truck-tractor, trailer, or bus is operated in combination with any truck, truck-tractor, trailer, or bus properly licensed or registered in accordance with sections 60-3,179 to 60-3,182 and 60-3,198 or agreements, arrangements, or declarations pursuant to such sections.

(2) Properly registered means a truck, truck-tractor, trailer, or bus licensed or registered in one of the following: (a) The jurisdiction where the person registering the truck, truck-tractor, trailer, or bus has his or her legal residence;

(b) the jurisdiction in which a truck, truck-tractor, trailer, or bus is registered, when the operation in which such truck, truck-tractor, trailer, or bus is used has a principal place of business therein, and from or in which the truck, truck-tractor, trailer, or bus is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled and the truck, truck-tractor, trailer, or bus is assigned to such principal place of business; or (c) the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration, the person registering the truck, truck-tractor, trailer, or bus has licensed the truck, truck-tractor, trailer, or bus as required by such jurisdiction.

Source: Laws 2005, LB 274, § 181.

60-3,182 Agreements, arrangements, declarations, and amendments; requirements.

(1) All agreements, arrangements, declarations, and amendments authorized by sections 60-3,179 to 60-3,182 and 60-3,198 shall be in writing and shall become effective when filed in the office of the director.

(2) Agreements or arrangements entered into or declarations issued under the authority of sections 60-3,179 to 60-3,182 may contain provisions denying exemptions, benefits, and privileges granted in such agreements, arrangements, or declarations to any truck, truck-tractor, trailer, or bus which is in violation of conditions stated in such agreements, arrangements, or declarations.

Source: Laws 2005, LB 274, § 182.

60-3,183 Registration under International Registration Plan Act; disciplinary actions; procedure; enforcement.

(1) The director may revoke, suspend, cancel, or refuse to issue or renew a registration certificate under sections 60-3,198 to 60-3,203 upon receipt of notice under the federal Performance and Registration Information Systems Management Program that the ability of the applicant or registration certificate holder to operate has been terminated or denied by a federal agency.

(2) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 2005, LB 274, § 183; Laws 2006, LB 853, § 3.

60-3,184 Motor vehicle tax and fee; terms, defined.

For purposes of sections 60-3,184 to 60-3,190:

(1) Automobile means passenger cars, trucks, utility vehicles, and vans up to and including seven tons;

(2) Motor vehicle means every motor vehicle and trailer subject to the payment of registration fees or permit fees under the laws of this state and every cabin trailer registered for operation upon the highways of this state;

(3) Motor vehicle fee means the fee imposed upon motor vehicles under section 60-3,190;

(4) Motor vehicle tax means the tax imposed upon motor vehicles under section 60-3,185; and

(5) Registration period means the period from the date of registration pursuant to section 60-392 to the first day of the month following one year after such date.

Source: Laws 2005, LB 274, § 184; Laws 2007, LB286, § 52.

60-3,185 Motor vehicle tax; exemptions.

A motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state, except:

(1) Motor vehicles exempt from the registration fee in section 60-3,160;

(2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs and who was discharged or otherwise separated with a characterization of honorable if an application for the exemption has been approved under subsection (1) of section 60-3,189;

(3) Motor vehicles owned by Indians as defined in 25 U.S.C. 479;

(4) Motor vehicles owned by a member of the United States Armed Forces serving in this state in compliance with military or naval orders if such person is a resident of a state other than Nebraska;

(5) Motor vehicles owned by the state and its governmental subdivisions and exempt as provided in subdivision (1)(a) or (b) of section 77-202;

(6) Motor vehicles owned and used exclusively by an organization or society qualified for a tax exemption provided in subdivision (1)(c) or (d) of section 77-202 if an application for the exemption provided in this subdivision has been approved under subsection (2) of section 60-3,189; and

(7) Trucks, trailers, or combinations thereof registered under section 60-3,198.

Source: Laws 2005, LB 274, § 185.

60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.

(1) The county treasurer or designated county official shall annually determine the motor vehicle tax on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to section 60-3,187 and cause a notice of the amount of the tax to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department and shall be mailed on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

Source: Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53.

60-3,187 Motor vehicle tax schedules; calculation of tax.

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

(3) The base tax shall be:

(a) Automobiles and motorcycles — An amount determined using the following table:

Value when new	Base tax
Up to $3,999	$ 25
$4,000 to $5,999	35
$6,000 to $7,999	45
$8,000 to $9,999	60
$10,000 to $11,999	100
$12,000 to $13,999	140
$14,000 to $15,999	180
$16,000 to $17,999	220

$18,000 to $19,999	260
$20,000 to $21,999	300
$22,000 to $23,999	340
$24,000 to $25,999	380
$26,000 to $27,999	420
$28,000 to $29,999	460
$30,000 to $31,999	500
$32,000 to $33,999	540
$34,000 to $35,999	580
$36,000 to $37,999	620
$38,000 to $39,999	660
$40,000 to $41,999	700
$42,000 to $43,999	740
$44,000 to $45,999	780
$46,000 to $47,999	820
$48,000 to $49,999	860
$50,000 to $51,999	900
$52,000 to $53,999	940
$54,000 to $55,999	980
$56,000 to $57,999	1,020
$58,000 to $59,999	1,060
$60,000 to $61,999	1,100
$62,000 to $63,999	1,140
$64,000 to $65,999	1,180
$66,000 to $67,999	1,220
$68,000 to $69,999	1,260
$70,000 to $71,999	1,300
$72,000 to $73,999	1,340
$74,000 to $75,999	1,380
$76,000 to $77,999	1,420
$78,000 to $79,999	1,460
$80,000 to $81,999	1,500
$82,000 to $83,999	1,540
$84,000 to $85,999	1,580
$86,000 to $87,999	1,620
$88,000 to $89,999	1,660
$90,000 to $91,999	1,700
$92,000 to $93,999	1,740
$94,000 to $95,999	1,780
$96,000 to $97,999	1,820
$98,000 to $99,999	1,860
$100,000 and over	1,900

(b) Assembled automobiles — $60

(c) Assembled motorcycles — $25

(d) Cabin trailers, up to one thousand pounds — $10

(e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — $25

(f) Cabin trailers, two thousand pounds and over — $40

(g) Recreational vehicles, less than eight thousand pounds — $160

(h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — $410

(i) Recreational vehicles, twelve thousand pounds and over — $860

(j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight

(k) Trucks — Over seven tons and less than ten tons — $360

(l) Trucks — Ten tons and over and less than thirteen tons — $560

(m) Trucks — Thirteen tons and over and less than sixteen tons — $760

(n) Trucks — Sixteen tons and over and less than twenty-five tons — $960

(o) Trucks — Twenty-five tons and over — $1,160

(p) Buses — $360

(q) Trailers other than semitrailers — $10

(r) Semitrailers — $110

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

Source: Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7.

60-3,188 Motor vehicle tax; valuation of vehicles; department; duties.

(1) The department shall determine motor vehicle manufacturers' suggested retail prices, gross vehicle weight ratings, and vehicle identification numbers using appropriate commercially available electronic information on a system designated by the department.

(2) For purposes of section 60-3,187, the department shall determine the value when new of automobiles and determine the gross vehicle weight ratings of motor vehicles over seven tons. The department shall make a determination for such makes and models of automobiles and motor vehicles already manufactured or being manufactured and shall, as new makes and models of such automobiles and motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for such new automobile or motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(3) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(4) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The objection must be filed in writing with the department and state why the determination is incorrect.

(5) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make a written order, mailed to the objector within seven days after the order. The final decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

Source: Laws 2005, LB 274, § 188; Laws 2007, LB286, § 54.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,189 Tax exemption; procedure; appeal.

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer or designated county official and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer or designated county official within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accor-

dance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Source: Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer or designated county official shall annually determine the motor vehicle fee on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than $20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

(a) Automobiles, with a value when new of less than $20,000, and assembled automobiles — $5

(b) Automobiles, with a value when new of $20,000 through $39,999 — $20

(c) Automobiles, with a value when new of $40,000 or more — $30

(d) Motorcycles — $10

(e) Recreational vehicles and cabin trailers — $10

(f) Trucks over seven tons and buses — $30

(g) Trailers other than semitrailers — $10

(h) Semitrailers — $30.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer or designated official prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted

by a county treasurer or designated county official which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation 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.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,191 Repealed. Laws 2007, LB 286, § 57.

60-3,192 International Registration Plan Act; act, how cited.

Sections 60-3,192 to 60-3,206 shall be known and may be cited as the International Registration Plan Act.

Source: Laws 2005, LB 274, § 192.

60-3,193 International Registration Plan Act; purposes of act.

The purposes of the International Registration Plan Act are to:

(1) Promote and encourage the fullest possible use of the highway system by authorizing registration of fleets of apportionable vehicles and the recognition of apportionable vehicles apportioned in other jurisdictions, thus contributing to the economic and social development and growth of the jurisdictions;

(2) Implement the concept of one registration plate for one vehicle;

(3) Grant exemptions from payment of certain fees when such grants are reciprocal; and

(4) Grant reciprocity to fleets of apportionable vehicles and provide for the continuance of reciprocity granted to those vehicles that are not eligible for apportioned registration under the act.

Source: Laws 2005, LB 274, § 193.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on July 1, 2008.

Source: Laws 2008, LB756, § 10.
Operative date July 1, 2008.

60-3,194 Director; powers and duties.

The director shall ratify and do all things necessary to effectuate the International Registration Plan Act with such exceptions as are deemed advisable and such changes as are necessary.

Source: Laws 2005, LB 274, § 194.

60-3,195 Conflict with rules and regulations; effect.

If any provision of the International Registration Plan Act conflicts with rules and regulations adopted and promulgated by the department, the provisions of the act shall control.

Source: Laws 2005, LB 274, § 195.

60-3,196 Apportionable vehicles; International Registration Plan; effect.

Apportionable vehicles registered as provided in section 60-3,198 and apportionable vehicles covered under the International Registration Plan shall be deemed fully registered in all jurisdictions where apportioned or granted reciprocity for any type of movement or operation. The registrant must have proper interjurisdiction or intrajurisdiction authority from the appropriate regulatory agency of each jurisdiction of this state if not exempt from regulation by the regulatory agency.

Source: Laws 2005, LB 274, § 196; Laws 2006, LB 853, § 4; Laws 2007, LB239, § 3; Laws 2008, LB756, § 14.
Operative date July 1, 2008.

60-3,197 Payment of apportioned fees; effect.

The payment to the base jurisdiction for all member and cooperating jurisdictions of apportioned fees due under the International Registration Plan Act discharges the responsibility of the registrant for payment of such apportioned fees to individual member and cooperating jurisdictions, except that the base jurisdiction shall cooperate with other declared jurisdictions in connection with applications and fees paid.

Source: Laws 2005, LB 274, § 197.

60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; propor-

tional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.

(1) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the juris-

diction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6) In the event of the transfer of ownership of any registered apportionable vehicle or in the case of loss of possession because of fire or theft or because the apportionable vehicle was wrecked, junked, or dismantled, its registration shall expire, except that if the registered owner applies to the division after such transfer or loss of possession and accompanies the application with the fee of one dollar and fifty cents, he or she may have assigned to another motor vehicle

the registration identification of the motor vehicle so transferred or lost. If the assigned apportionable vehicle has a greater gross vehicle weight than the transferred or lost apportionable vehicle, the owner of the assigned apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because of (a) the transfer of ownership or (b) the loss of possession due to fire or theft or because the apportionable vehicle was wrecked, junked, or dismantled, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered outside of Nebraska, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet,

whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(10) In lieu of registration under subsections (1) through (9) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(11) Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be valid for a period of seventy-two hours. The fee for such permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. The carrier enforcement division shall act as an agent for the Division of Motor Carrier Services in collecting such fees and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Trip permits shall be obtained at the first available location whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this subsection as reimbursement for the clerical work of issuing the permits.

Source: Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15.
Operative date July 18, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,199 Reciprocity agreement or existing arrangement; validity.

Nothing in sections 60-3,179 to 60-3,182 or 60-3,198 shall affect the validity or operation of any reciprocity agreement or arrangement presently existing and in effect between Nebraska and any other jurisdiction, and all such agreements or arrangements shall continue until specifically canceled by the director or replaced by a new agreement or arrangement in accordance with the provisions of such sections.

Source: Laws 2005, LB 274, § 199.

60-3,200 Apportionable vehicle; refund of fees; when.

Whenever an apportionable vehicle is registered by the owner under section 60-362 and the motor vehicle tax and motor vehicle fee imposed in sections 60-3,185 and 60-3,190 have been paid on that apportionable vehicle for the registration period, and then the apportionable vehicle is registered under section 60-3,198, the Division of Motor Carrier Services, upon application of the owner of the apportionable vehicle on forms prescribed by the division, shall certify that the apportionable vehicle is registered under section 60-3,198

and that the owner is entitled to receive the refunds of the unused fees for the balance of the registration period as prescribed in sections 60-395 to 60-397.

Source: Laws 2005, LB 274, § 200.

60-3,201 Motor Carrier Division Cash Fund; created; use; investment.

There is hereby created the Motor Carrier Division Cash Fund. Such fund shall be used by the Division of Motor Carrier Services of the department to carry out the operations of the division including the administration of titling and registering vehicles in interjurisdiction commerce and its duties pursuant to section 66-1415. 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 274, § 201.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.

(1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer or designated county official of each county in the same proportion as the number of original apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer or designated county official shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax 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 2005, LB 274, § 202; Laws 2007, LB334, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,203 Permanent license plate; application; fee; renewal fee; replacement permanent plate; registration certificate replacement; deletion from fleet registration; fee.

(1) Upon application and payment of the fees required pursuant to this section and section 60-3,198, the Division of Motor Carrier Services of the department shall issue to the owner of any fleet of apportionable commercial vehicles with a base registration in Nebraska a permanent license plate for each truck, truck-tractor, and trailer in the fleet. The application shall be accompanied by a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application shall be on a form developed by the division.

(2) Fleets of apportionable vehicles license plates shall display a distinctive license plate provided by the department pursuant to this section.

(3) Any license plate issued pursuant to this section shall remain affixed to the front of the truck or truck-tractor or to the rear of the trailer or semitrailer as long as the apportionable vehicle is registered pursuant to section 60-3,198 by the owner making the original application pursuant to subsection (1) of this section. Upon transfer of ownership of the truck, truck-tractor, or trailer or transfer of ownership of the fleet or at any time the truck, truck-tractor, or trailer is no longer registered pursuant to section 60-3,198, the license plate shall cease to be active and shall be processed according to the rules and regulations of the department.

(4) The renewal fee for each permanent plate shall be two dollars and shall be assessed and collected in each license year after the year in which the permanent license plates are initially issued at the time all other renewal fees are collected pursuant to section 60-3,198 unless a truck, truck-tractor, or trailer has been deleted from the fleet registration.

(5)(a) If a permanent license plate is lost or destroyed, the owner shall submit an affidavit to that effect to the division prior to any deletion of the truck, truck-tractor, or trailer from the fleet registration. If the truck, truck-tractor, or trailer is not deleted from the fleet registration, a replacement permanent license plate may be issued upon application and payment of a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application for a replacement permanent plate shall be on a form developed by the division.

(b) If the registration certificate for any fleet vehicle is lost or stolen, the division shall collect a fee of one dollar for replacement of such certificate.

(6) If a truck, truck-tractor, or trailer for which a permanent license plate has been issued pursuant to this section is deleted from the fleet registration due to loss of possession by the registrant, the plate shall be returned to the division.

(7) The registrant shall be liable for the full amount of the registration fee due for any truck, truck-tractor, or trailer not deleted from the fleet registration renewal.

(8) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 203.

60-3,204 Registration fee; calculation.

The registration fee for apportionable vehicles shall be determined as follows:

(1) Divide the injurisdiction distance by the total fleet distance generated during the preceding year;

(2) Determine the total fees required under the laws of each jurisdiction for full registration of each apportionable vehicle at the regular annual or applicable fees or for the unexpired portion of the registration year; and

(3) Multiply the sum obtained under subdivision (2) of this section by the quotient obtained under subdivision (1) of this section.

Source: Laws 2005, LB 274, § 204.

60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-348 to 75-358 or 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10.

Cross References

Administrative Procedure Act, see section 84-920.
International Fuel Tax Agreement Act, see section 66-1401.

60-3,206 International Registration Plan Act; violations; penalty.

Any person, firm, association, partnership, limited liability company, or corporation which violates any provision of the International Registration Plan Act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 274, § 206.

60-3,207 Snowmobiles; terms, defined.

For purposes of sections 60-3,207 to 60-3,219:

(1) Dealer means any person engaged in the business of selling snowmobiles at wholesale or retail;

(2) Manufacturer means a person, partnership, limited liability company, or corporation engaged in the business of manufacturing snowmobiles; and

(3) Operate means to ride in or on and control the operation of a snowmobile.

Source: Laws 2005, LB 274, § 207.

60-3,208 Snowmobiles; registration required.

Except as otherwise provided in sections 60-3,207 to 60-3,219, no person shall operate any snowmobile within the State of Nebraska unless such snowmobile has been registered in accordance with sections 60-3,209 to 60-3,213.

Source: Laws 2005, LB 274, § 208.

60-3,209 Snowmobiles; registration; application.

Application for registration shall be made to the county treasurer or designated county official in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer, and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's or designated county official's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer or designated county official and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times. Application for registration shall be made within fifteen days after the date of purchase.

Source: Laws 2005, LB 274, § 209.

60-3,210 Snowmobiles; registration; fee.

(1) The fee for registration of each snowmobile shall be:

(a) For each snowmobile owned by a person other than dealers or manufacturers, eight dollars per year and one dollar for a duplicate or transfer;

(b) For all snowmobiles owned by a dealer and operated for demonstration or testing purposes, twenty-five dollars per year; and

(c) For all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes, one hundred dollars per year.

(2) Snowmobile dealer and manufacturer registrations shall not be transferable.

Source: Laws 2005, LB 274, § 210.

60-3,211 Snowmobiles; certificate of registration and validation decal; expiration; renewal; procedure.

(1) The certificate of registration and validation decal issued shall be valid for two years. The registration period for snowmobiles shall expire on the last day

of September two years after the year of issuance, and renewal shall become delinquent on the first day of the following month.

(2) Such registration may be renewed every two years in the same manner as provided for the original registration.

(3) Every owner of a snowmobile shall renew his or her registration in the manner prescribed in section 60-3,209 upon payment of the registration fees provided in section 60-3,210.

Source: Laws 2005, LB 274, § 211.

60-3,212 Snowmobiles; refund of fees; when.

Upon transfer of ownership of any snowmobile or in case of loss of possession because of fire, theft, dismantlement, or junking, its registration shall expire, and the registered owner may, by returning the registration certificate and after making affidavit of such transfer or loss to the county official who issued the certificate, receive a refund of that part of the unused fees based on the number of unexpired months remaining in the registration period, except that when such snowmobile is transferred within the same calendar month in which acquired, no refund shall be allowed for such month.

Source: Laws 2005, LB 274, § 212.

60-3,213 Snowmobiles; state or political subdivision; fee waived.

A registration number shall be issued without the payment of a fee for snowmobiles owned by the state or a political subdivision thereof upon application therefor.

Source: Laws 2005, LB 274, § 213.

60-3,214 Snowmobiles; registration; exemptions.

No registration shall be required for snowmobiles:

(1) Owned and used by the United States, another state, or a political subdivision thereof;

(2) Registered in a country other than the United States and temporarily used within this state;

(3) Covered by a valid license of another state and which have not been within this state for more than thirty consecutive days; and

(4) Which are operated only on land owned or leased by the owner thereof.

Source: Laws 2005, LB 274, § 214.

60-3,215 Snowmobiles; licensing or registration by political subdivision prohibited.

No political subdivision of this state shall require licensing or registration of snowmobiles covered by the provisions of sections 60-3,207 to 60-3,219.

Source: Laws 2005, LB 274, § 215.

60-3,216 Snowmobiles; reciprocity; when.

Snowmobiles properly registered in another state shall be allowed to operate in the State of Nebraska on a reciprocal basis.

Source: Laws 2005, LB 274, § 216.

60-3,217 Snowmobiles; fees; disposition.

(1) The county treasurers and designated county officials shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

Source: Laws 2005, LB 274, § 217.

60-3,218 Nebraska Snowmobile Trail Cash Fund; created; use; Game and Parks Commission; establish rules and regulations.

(1) There is hereby created the Nebraska Snowmobile Trail Cash Fund into which shall be deposited the portion of the fees collected from snowmobile registration as provided in section 60-3,217.

(2) The Game and Parks Commission shall use the money in the Nebraska Snowmobile Trail Cash Fund for the operation, maintenance, enforcement, planning, establishment, and marking of snowmobile trails throughout the state and for the acquisition by purchase or lease of real property to carry out the provisions of this section.

(3) The commission shall establish rules and regulations pertaining to the use and maintenance of snowmobile trails.

Source: Laws 2005, LB 274, § 218.

60-3,219 Snowmobiles; records.

The department shall keep a record of each snowmobile registered, employing such methods and practices as may be necessary to maintain an accurate record.

Source: Laws 2005, LB 274, § 219.

60-3,220 Registration, rules, regulations, and orders under prior law; effect.

(1) The repeal of Chapter 60, article 3, as it existed on September 4, 2005, and the enactment of the Motor Vehicle Registration Act is not intended to affect the validity of the registration of any motor vehicle, trailer, or snowmobile or the validity of any license plate, permit, renewal tab, or tonnage sticker issued under Chapter 60, article 3, and in existence on such date. All such license plates, permits, renewal tabs, and tonnage stickers are valid under the Motor Vehicle Registration Act as if registration had taken place under such act.

(2) The rules, regulations, and orders of the Director of Motor Vehicles and the Department of Motor Vehicles issued under Chapter 60, article 3, shall remain in effect as if issued under the Motor Vehicle Registration Act unless changed or eliminated by the director or the department to the extent such power is statutorily granted to the director and department.

Source: Laws 2005, LB 274, § 220.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck;

(iv) Local truck;

(v) Recreational vehicle; or

(vi) Bus;

(b) A utility trailer shall only be towed by:

(i) A properly registered passenger car;

(ii) A properly registered commercial motor vehicle or apportionable vehicle;

(iii) A properly registered farm truck;

(iv) A properly registered local truck;

(v) A properly registered recreational vehicle;

(vi) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(vii) A properly registered well-boring apparatus;

(viii) A dealer-plated vehicle;

(ix) A personal-use dealer-plated vehicle; or

(x) A properly registered bus;

(c) A farm trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle; or

(iii) Farm truck;

(d) A commercial trailer shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck;

(e) A fertilizer trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck; or

(iv) Local truck;

(f) A pole and cable reel trailer shall only be towed by a properly registered:

(i) Commercial motor vehicle or apportionable vehicle; or

(ii) Local truck;

(g) A dealer-plated trailer shall only be towed by:

(i) A dealer-plated vehicle;

(ii) A properly registered passenger car;

(iii) A properly registered commercial motor vehicle or apportionable vehicle;

(iv) A properly registered farm truck; or

(v) A personal-use dealer-plated vehicle; and

(h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section
60-462. Act, how cited.
60-462.01. Federal regulations; adopted.
60-462.02. Legislative intent; director; department; powers and duties.
60-463. Definitions, where found.
60-465. Commercial motor vehicle, defined.
60-465.01. Department, defined.
60-468.01. Full legal name, defined.
60-470.02. Interactive wireless communication device, defined.
60-475.01. Principal residence, defined.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479. Sections; applicability.
60-479.01. Section; applicability; fraudulent document recognition training.
60-480. Operators' licenses; classification.
60-480.01. Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.
60-484. Operator's license required, when; state identification card; application.
60-484.01. Digital system authorized.
60-484.02. Digital images and signatures; use; confidentiality; violation; penalty.
60-490. Operators' licenses; state identification cards; expiration; renewal.
60-493. Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty.
60-497.01. Conviction and probation records; abstract of court record; transmission to director; duties.

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,188 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1.
Effective date July 18, 2008.

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2008:

(1) Beginning on an implementation date designated by the director, the federal requirements for interstate shipment of etiologic agents, 42 C.F.R. part 72; and

(2) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16.
Operative date July 1, 2008.

60-462.02 Legislative intent; director; department; powers and duties.

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The director shall designate an implementation date for such processes which date is on or before April 1, 2009. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

Source: Laws 2008, LB911, § 2.
Effective date July 18, 2008.

60-463 Definitions, where found.

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

Source: Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3.
Effective date July 18, 2008.

60-465 Commercial motor vehicle, defined.

(1) Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating of eleven thousand seven hundred ninety-four kilograms or more (twenty-six thousand one pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than four thousand five hundred thirty-six kilograms (ten thousand pounds);

(b) Has a gross vehicle weight rating of eleven thousand seven hundred ninety-four or more kilograms (twenty-six thousand one pounds or more);

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and 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 motor vehicle to be placarded under 49 C.F.R. part 172, subpart F.

(2) Commercial motor vehicle does not include (a) a farm truck as defined in section 60-325 other than a combination of truck-tractors and semitrailers when such farm truck is operated within one hundred fifty miles of the registered owner's farm or ranch, (b) any recreational vehicle as defined in section 60-347 or motor vehicle towing a cabin trailer as defined in sections 60-314 and 60-339, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by persons identified in section 60-4,131.01.

Source: Laws 1989, LB 285, § 15; Laws 2005, LB 76, § 4; Laws 2005, LB 274, § 235; Laws 2006, LB 853, § 8; Laws 2006, LB 1007, § 5.

60-465.01 Department, defined.

Department means the Department of Motor Vehicles.

Source: Laws 2008, LB911, § 4.
Effective date July 18, 2008.

60-468.01 Full legal name, defined.

Full legal name means an individual's first name, middle name, and last or surname without use of initials or nicknames.

Source: Laws 2008, LB911, § 5.
Effective date July 18, 2008.

60-470.02 Interactive wireless communication device, defined.

Interactive wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

Source: Laws 2007, LB415, § 3.

60-475.01 Principal residence, defined.

Principal residence means the location in Nebraska where a person resides at the time of application even if such residence is temporary.

Source: Laws 2008, LB911, § 6.
Effective date July 18, 2008.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479 Sections; applicability.

Sections 60-479.01 to 60-4,111.01 and 60-4,182 to 60-4,188 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7.
Effective date July 18, 2008.

60-479.01 Section; applicability; fraudulent document recognition training.

This section applies beginning on an implementation date designated by the director pursuant to section 60-462.02. All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

Source: Laws 2008, LB911, § 8.
Effective date July 18, 2008.

60-480 Operators' licenses; classification.

Operators' licenses issued by the Department of Motor Vehicles pursuant to the Motor Vehicle Operator's License Act shall be classified as follows:

(1) Class O license. The operator's license which authorizes the person to whom it is issued to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle;

(2) Class M license. The operator's license or endorsement on a Class O license, provisional operator's permit, learner's permit, school permit, or commercial driver's license which authorizes the person to whom it is issued to operate a motorcycle on highways;

(3) CDL-commercial driver's license. The operator's license which authorizes the person to whom it is issued to operate a class of commercial motor vehicles or any motor vehicle, except a motorcycle, on highways;

(4) RCDL-restricted commercial driver's license. The class of commercial driver's license which, when held with an annual seasonal permit, authorizes a seasonal commercial motor vehicle operator as defined in section 60-4,146.01 to operate any Class B Heavy Straight Vehicle or Class C Small Vehicle commercial motor vehicle for purposes of a farm-related or ranch-related service industry as defined in such section within one hundred fifty miles of the employer's place of business or the farm or ranch currently being served as provided in such section or any other motor vehicle, except a motorcycle, on highways;

(5) POP-provisional operator's permit. A motor vehicle operating permit with restrictions issued pursuant to section 60-4,120.01 to a person who is at least sixteen years of age but less than eighteen years of age which authorizes the person to operate any motor vehicle except a commercial motor vehicle or motorcycle;

(6) SCP-school permit. A permit issued to a student between fourteen years and two months of age and sixteen years of age for the purpose of driving in accordance with the requirements of section 60-4,124;

(7) FMP-farm permit. A permit issued to a person for purposes of operating farm tractors and other motorized implements of farm husbandry on highways in accordance with the requirements of section 60-4,126;

(8) LPC-learner's permit. A permit which when held in conjunction with a Class O license or commercial driver's license authorizes a person to operate a commercial motor vehicle for learning purposes when accompanied by a person who is at least twenty-one years of age;

(9) LPD-learner's permit. A permit issued in accordance with the requirements of section 60-4,123 to a person at least fifteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, for learning purposes when accompanied by a licensed operator who is at least twenty-one years of age and who possesses a valid operator's license issued by this state or another state;

(10) LPE-learner's permit. A permit issued to a person at least fourteen years of age which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, while learning to drive in preparation for application for a school permit;

(11) EDP-employment driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,129 and 60-4,130;

(12) IIP-ignition interlock permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, which is equipped with an ignition interlock device;

(13) SEP-seasonal permit. A permit issued to a person who holds a restricted commercial driver's license authorizing the person to operate a commercial motor vehicle, as prescribed by section 60-4,146.01, for no more than one hundred eighty consecutive days in any twelve-month period. The seasonal permit shall be valid and run from the date of original issuance of the permit for one hundred eighty days and from the date of annual revalidation of the permit; and

(14) MHP-medical hardship driving permit. A permit issued to a person which authorizes the person to operate a motor vehicle, except a commercial motor vehicle, pursuant to the requirements of sections 60-4,130.01 and 60-4,130.02.

Source: Laws 1989, LB 285, § 30; Laws 1990, LB 980, § 8; Laws 1993, LB 105, § 6; Laws 1993, LB 420, § 4; Laws 1998, LB 320, § 2; Laws 1999, LB 704, § 4; Laws 2001, LB 387, § 3; Laws 2005, LB 675, § 1; Laws 2008, LB736, § 1.
Operative date January 1, 2009.

60-480.01 Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.

(1)(a) Undercover drivers' licenses may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover drivers' licenses may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, and the Department of Agriculture for special investigative purposes. Undercover drivers' licenses are not for personal use.

(b) The director shall prescribe a form for agencies to apply for undercover drivers' licenses. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover drivers' licenses are to be used only for legitimate criminal investigatory purposes, and a statement that undercover drivers' licenses are not for personal use.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fees prescribed in section 60-4,115. If the undercover drivers' licenses will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover drivers' licenses will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover drivers' licenses will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director

determines that the undercover drivers' licenses will be used for such a purpose, he or she may issue the undercover drivers' licenses in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover drivers' licenses is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover drivers' licenses confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover drivers' licenses in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover drivers' licenses to the Department of Motor Vehicles if:

(a) The undercover drivers' licenses expire and are not renewed;

(b) The purpose for which the undercover drivers' licenses were issued has been completed or terminated;

(c) The persons for whom the undercover drivers' licenses were issued cease to be employees of the agency; or

(d) The director requests their return.

Source: Laws 1997, LB 256, § 6; Laws 2007, LB296, § 228.

60-484 Operator's license required, when; state identification card; application.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of the State of Nebraska until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) In addition to any other information and questions necessary to comply with the requirements and purposes of the act, the applicant (i) shall provide his or her name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, gender, social security number, and brief description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness … yes … no

(II) experienced vertigo or multiple episodes of dizziness or fainting … yes … no

(III) experienced disorientation … yes … no

(IV) experienced seizures … yes … no

(V) experienced impairment of memory, memory loss ... yes ... no

Please explain: .....

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(C) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: ....., and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license shall be made under oath or affirmation of the applicant.

(e) The social security number shall not be printed on the operator's license and shall be used only (i) to furnish driver record information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, or (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent.

(f)(i) Except for an individual under the age of eighteen years, each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity by a valid Nebraska operator's license, a valid Nebraska learner's permit, a valid Nebraska school permit, a valid operator's license from another state or jurisdiction of the United States, a certified birth certificate, a certified birth registration, a valid United States passport, a valid United States military identification card, United States military discharge papers, other United States-based identification as approved by the director, or information preserved in the digital system implemented under section 60-484.01.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate, a certified birth registration, or other reliable proof of his or her identity and age accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant may be required to furnish proof to the examiner that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant (i) shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (2)(f) of this subsection, and a brief physical description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness … yes … no

(II) experienced vertigo or multiple episodes of dizziness or fainting … yes … no

(III) experienced disorientation … yes … no

(IV) experienced seizures … yes … no

(V) experienced impairment of memory, memory loss … yes … no

Please explain: . . . . . .

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) … yes … no

Please explain: . . . . . .

(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? … yes … no

Please explain, including how the above affects your ability to drive: . . . . . , and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the

information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, or (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (2)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

Source: Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675; Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 878, § 1; Laws 1986, LB 153, § 9; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9.
Effective date July 18, 2008.

Cross References

Address Confidentiality Act, see section 42-1201.

60-484.01 Digital system authorized.

It is the intent of the Legislature to authorize the Department of Motor Vehicles to begin issuing operators' licenses and state identification cards using digital images and digital signatures and to allow for electronic renewal of certain operators' licenses and state identification cards. The department shall implement such a digital system.

Source: Laws 2001, LB 574, § 3; Laws 2005, LB 1, § 2.

60-484.02 Digital images and signatures; use; confidentiality; violation; penalty.

(1) Each applicant for an operator's license or state identification card shall have his or her digital image taken. Digital images shall be preserved for use as prescribed in sections 60-4,119, 60-4,151, and 60-4,180. The images shall be used for issuing operators' licenses and state identification cards. The images may be retrieved only by the Department of Motor Vehicles for issuing renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(2) Upon application for an operator's license or state identification card, each applicant shall provide his or her signature in a form prescribed by the department. Digital signatures shall be preserved for use on original, renewal, duplicate, and replacement operators' licenses and state identification cards and may not be otherwise released except in accordance with subsection (3) of this section.

(3) No officer, employee, agent, or contractor of the department or a law enforcement officer shall release a digital image or a digital signature except to a federal, state, or local law enforcement agency or a driver licensing agency of another state for the purpose of carrying out the functions of the agency or assisting another agency in carrying out its functions upon the verification of the identity of the person requesting the release of the information and the verification of the purpose of the requester in requesting the release. Any officer, employee, agent, or contractor of the department or law enforcement officer that knowingly discloses or knowingly permits disclosure of a digital image or digital signature in violation of this section shall be guilty of a Class IV felony and shall be subject to removal from office or discharge in the discretion of the Governor or agency head, as appropriate.

Source: Laws 2001, LB 574, § 4; Laws 2004, LB 560, § 38; Laws 2005, LB 1, § 3.

60-490 Operators' licenses; state identification cards; expiration; renewal.

(1) Operators' licenses issued to persons required to use bioptic or telescopic lenses as provided in section 60-4,118 shall expire annually on the licensee's birthday for all such licenses issued prior to January 1, 2007, and on the licensee's birthday in the second year after issuance, unless specifically restricted to a shorter renewal period as determined under section 60-4,118, for all such licenses issued on or after January 1, 2007.

(2) Except for state identification cards issued to persons less than twenty-one years of age, all state identification cards expire on the cardholder's birthday in the fifth year after issuance. A state identification card issued to a person who is less than twenty-one years of age expires on his or her twenty-first birthday or on his or her birthday in the fifth year after issuance, whichever comes first.

(3) Except as otherwise provided in subsection (1) of this section and section 60-4,147.05 and except for operators' licenses issued to persons less than twenty-one years of age, operators' licenses issued pursuant to the Motor Vehicle Operator's License Act expire on the licensee's birthday in the fifth year after issuance. An operator's license issued to a person less than twenty-one years of age expires on his or her twenty-first birthday. Except as otherwise provided in section 60-4,147.05, the Department of Motor Vehicles shall mail out a renewal notice for each operator's license at least thirty days before the expiration of the operator's license.

(4)(a) The expiration date shall be stated on each operator's license or state identification card.

(b) Except as otherwise provided in section 60-4,147.05, licenses and state identification cards issued to persons who are twenty-one years of age or older which expire under this section may be renewed within a ninety-day period before the expiration date. Any person who is twenty-one years of age or older and who is the holder of a valid operator's license or state identification card may renew his or her license or card prior to the ninety-day period before the expiration date on such license or card if such applicant furnishes proof that he or she will be absent from the state during the ninety-day period prior to such expiration date.

(c) A person who is twenty years of age may apply for an operator's license or a state identification card within sixty days prior to his or her twenty-first birthday. The operator's license or state identification card may be issued within ten days prior to such birthday.

(d) A person who is under twenty years of age and who holds a state identification card may apply for renewal within a ninety-day period prior to the expiration date.

Source: Laws 1989, LB 285, § 34; Laws 1990, LB 742, § 2; Laws 1993, LB 7, § 1; Laws 1998, LB 309, § 3; Laws 1998, LB 320, § 3; Laws 1999, LB 704, § 8; Laws 2001, LB 574, § 7; Laws 2005, LB 1, § 4; Laws 2005, LB 76, § 6; Laws 2006, LB 1008, § 1.

60-493 Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty.

When a person applies for an operator's license or state identification card, the county treasurer or examiner of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designat-

ed organ procurement organization in Nebraska within five working days of the name and address of such individual.

Source: Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Source: Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 366, § 15, p. 1255; Laws 1957, c. 165, § 1, p. 582; Laws 1972, LB 1058, § 2; Laws 1972, LB 1032, § 247; Laws 1973, LB 317, § 1; Laws 1973, LB 226, § 25; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 575, § 15; Laws 1993, LB 564, § 13; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2.
Operative date January 1, 2009.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Nebraska Rules of the Road, see section 60-601.

60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; eligibility for employment driving permit and ignition interlock permit.

(1) At the expiration of thirty days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of ninety days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding twelve-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) At the expiration of thirty days after an order of revocation is entered under subsection (1) of this section, any person whose operator's license has been administratively revoked for a period of ninety days for submitting to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 may make application to the director for issuance of an employment driving permit pursuant to section 60-4,130.

(3)(a) At the expiration of thirty days after an order of administrative license revocation for ninety days is entered under subsection (1) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the Department of Motor Vehicles that such a device is installed.

(b) At the expiration of sixty days after an order of administrative license revocation for one year is entered under subsection (1) of this section, any person who submitted to a chemical test pursuant to section 60-6,197 which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 is eligible for an order to allow application for an ignition interlock permit in order to operate a motor vehicle equipped with an ignition interlock device pursuant to section 60-6,211.05 upon presentation of sufficient evidence to the Department of Motor Vehicles that such a device is installed.

(c) A person operating a motor vehicle pursuant to this subsection shall only operate the motor vehicle from his or her residence to his or her place of employment, school, or alcohol treatment program or an ignition interlock service facility. Such permit shall indicate for which purposes the permit may

be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) No person shall be eligible for an employment driving permit or an ignition interlock permit during any period of time during which his or her operator's license is subject to an administrative revocation order for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197.

(5) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(6)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) Within the thirty-day period following the date of arrest, the prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196 and notified the director by first-class mail or facsimile transmission of such decision and the director received such notice within such period or the notice was postmarked within such period; or

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a charge is filed for a violation of section 60-6,196 pursuant to an arrest for which all proceedings were dismissed under this subsection, the prosecuting attorney shall notify the director by first-class mail or facsimile transmission of the filing of such charge and the director may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Source: Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3.
Operative date January 1, 2009.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,112 Sections; applicability.

Sections 60-4,114, 60-4,116, and 60-4,118 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Source: Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10.
Effective date July 18, 2008.

60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.

(1) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more examiners who shall examine all applicants for an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The director may, in his or her discretion, also appoint one or more examining officers with similar powers as are set forth in section 60-4,114. The same examiner may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The examiner shall conduct the examination of applicants and deliver to each successful applicant a certificate entitling such applicant to secure an operator's license. If the examiner refuses to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. The successful applicant shall, within ninety days, present his or her certificate to the county treasurer who shall immediately issue the operator's license and collect the fee therefor. The county treasurer shall report the issuance of such licenses to the department within five days after issuance.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(b) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

Source: Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 142, § 1, p. 454; Laws 1945, c. 141, § 2, p. 447; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972;

Laws 1961, c. 317, § 1, p. 1016; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11.
Effective date July 18, 2008.

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund. The State Treasurer shall transfer an amount equal to three dollars and fifty cents times the number of original or renewal Class M licenses issued pursuant to section 60-4,127 during the previous year from the Department of Motor Vehicles Cash Fund to the Motorcycle Safety Education Fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Duplicate or replacement	11.00	2.75	6.00	2.25

Add, change, or remove class, endorsement,or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Duplicate or replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25

Bioptic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
LPC-learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
School bus permit:				
Original or renewal	5.00	0	5.00	0
Duplicate or replacement	5.00	0	5.00	0
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0

(3) If the department issues an operator's license or a state identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Ignition Interlock Device Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be ten dollars. Twenty-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Four dollars and seventy-five cents of the fee shall be remitted to the State Treasurer for credit to the Ignition Interlock Device Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the

surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp.,1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB736, section 4, with LB911, section 12, to reflect all amendments.

Note: Changes made by LB911 became effective July 18, 2008. Changes made by LB736 became operative January 1, 2009.

60-4,117 Issuance of license by county treasurer; form; operator's license or state identification card; delivery; form; county treasurer; duties.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of the certificate for an operator's license issued by the examining officer to the applicant for such license, the county treasurer shall issue such license to the applicant. The license shall be in full force and effect until the expiration date thereon, until officially revoked, suspended, canceled by an order of the director, or until ordered revoked or impounded by a court of competent jurisdiction.

(b) The operator's license shall be in a form prescribed by the department. The license may include security features prescribed by the department. The license shall be conspicuously marked Nebraska Operator's License, shall be, to the maximum extent practicable, tamper proof, and shall include the following information:

(i) The name and residential and post office address of the holder;

(ii) The holder's color photograph or digital image;

(iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of motor vehicle which the holder is authorized to operate and any endorsements or restrictions;

(vii) The dates between which the license is valid;

(viii) The organ and tissue donation information specified in section 60-494; and

(ix) Such other facts and information as the director may determine.

(c) Machine-readable information encoded on an operator's license shall be limited to the information appearing on the face of the license.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(b) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

(i) The full legal name and principal residence address of the holder;

(ii) The holder's full facial digital image;

(iii) A physical description of the holder, including gender, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;

(vii) The issuance and expiration date of the license or card;

(viii) The organ and tissue donation information specified in section 60-494; and

(ix) Such other marks and information as the director may determine.

(c) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

Source: Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13.
Effective date July 18, 2008.

60-4,118 Vision requirements; persons with physical impairments; physical or mental incompetence; prohibited act; penalty.

(1) No operator's license shall be granted to any applicant until such applicant satisfies the examiner that he or she possesses sufficient powers of eyesight to enable him or her to obtain a Class O license and to operate a motor

vehicle on the highways of this state with a reasonable degree of safety. The Department of Motor Vehicles, with the advice of the Health Advisory Board, shall adopt and promulgate rules and regulations:

(a) Requiring a minimum acuity level of vision. Such level may be obtained through the use of standard eyeglasses, contact lenses, or bioptic or telescopic lenses which are specially constructed vision correction devices which include a lens system attached to or used in conjunction with a carrier lens; and

(b) Requiring a minimum field of vision. Such field of vision may be obtained through standard eyeglasses, contact lenses, or the carrier lens of the bioptic or telescopic lenses.

(2) If a vision aid is used by the applicant to meet the vision requirements of this section, the operator's license of the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant within ninety days of the applicant's license examination. If the vision reading meets the vision requirements prescribed by the department, the vision requirements of this section shall have been met. If the vision reading demonstrates that the applicant is required to use bioptic or telescopic lenses to operate a motor vehicle, the statement from the optometrist or ophthalmologist shall also indicate when the applicant needs to be reexamined for purposes of meeting the vision requirements for an operator's license as prescribed by the department. If such time period is two years or more after the date of the application, the license shall be valid for two years. If such time period is less than two years, the license shall be valid for such time period.

(3) If the applicant for an operator's license discloses that he or she has any other physical impairment which may affect the safety of operation by such applicant of a motor vehicle, the examiner shall require the applicant to show cause why such license should be granted and, through such personal examination and demonstration as may be prescribed by the director with the advice of the Health Advisory Board, to show the necessary ability to safely operate a motor vehicle on the highways. The director may also require the person to appear before the board or a designee of the board. If the examiner, board, or designee is then satisfied that such applicant has the ability to safely operate a motor vehicle, an operator's license may be issued to the applicant subject, at the discretion of the director, to a limitation to operate only such motor vehicles at such time, for such purpose, and within such area as the license shall designate.

(4)(a) The director may, when requested by a law enforcement officer, when the director has reason to believe that a person may be physically or mentally incompetent to operate a motor vehicle, or when a person's driving record appears to the department to justify an examination, request the advice of the Health Advisory Board and may give notice to the person to appear before an examiner, the board, or a designee of the director for examination concerning the person's ability to operate a motor vehicle safely. Any such request by a law enforcement officer shall be accompanied by written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

(b) A refusal to appear before an examiner, the board, or a designee of the director for an examination after notice to do so shall be unlawful and shall result in the immediate cancellation of the person's operator's license by the director.

(c) If the person cannot qualify at the examination by an examiner, his or her operator's license shall be immediately surrendered to the examiner and forwarded to the director who shall cancel the person's operator's license.

(d) If in the opinion of the board the person cannot qualify at the examination by the board, the board shall advise the director. If the director determines after consideration of the advice of the board that the person lacks the physical or mental ability to operate a motor vehicle, the director shall notify the person in writing of the decision. Upon receipt of the notice, the person shall immediately surrender his or her operator's license to the director who shall cancel the person's operator's license.

(e) Refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her operator's license as required by this subsection shall be guilty of a Class III misdemeanor.

Source: Laws 1929, c. 148, § 5, p. 514; C.S.1929, § 60-405; Laws 1931, c. 104, § 2, p. 277; Laws 1937, c. 141, § 15, p. 512; C.S.Supp.,1941, § 60-405; R.S.1943, § 60-407; Laws 1945, c. 141, § 4, p. 449; Laws 1949, c. 179, § 11, p. 511; Laws 1951, c. 200, § 1, p. 753; Laws 1955, c. 240, § 1, p. 751; Laws 1955, c. 241, § 1, p. 754; Laws 1957, c. 272, § 1, p. 995; Laws 1959, c. 286, § 3, p. 1082; Laws 1959, c. 292, § 1, p. 1094; Laws 1961, c. 315, § 5, p. 1000; Laws 1961, c. 316, § 5, p. 1009; Laws 1963, c. 358, § 1, p. 1144; Laws 1963, c. 359, § 1, p. 1148; Laws 1965, c. 381, § 1, p. 1230; Laws 1965, c. 219, § 2, p. 637; Laws 1967, c. 234, § 2, p. 621; Laws 1971, LB 725, § 1; Laws 1973, LB 90, § 1; Laws 1974, LB 611, § 1; Laws 1974, LB 821, § 14; Laws 1977, LB 39, § 76; Laws 1984, LB 710, § 1; Laws 1984, LB 811, § 4; Laws 1987, LB 224, § 22; Laws 1988, LB 1093, § 1; Laws 1989, LB 284, § 5; R.S.1943, (1988), § 60-407; Laws 1989, LB 285, § 68; Laws 1990, LB 742, § 3; Laws 1993, LB 564, § 15; Laws 1994, LB 211, § 10; Laws 1995, LB 37, § 9; Laws 1995, LB 467, § 12; Laws 1998, LB 309, § 6; Laws 1998, LB 320, § 6; Laws 1999, LB 585, § 2; Laws 1999, LB 704, § 18; Laws 2001, LB 38, § 30; Laws 2001, LB 387, § 5; Laws 2006, LB 1008, § 3.

60-4,118.02 Health Advisory Board; created; members; terms; meetings.

(1) There is hereby created the Health Advisory Board which shall consist of six health care providers appointed by the director with the advice and recommendation of the Department of Health and Human Services. The members of the board shall consist of one general practice physician, one physician engaged in the practice of ophthalmology, one physician engaged in the practice of orthopedic surgery, one physician engaged in the practice of neurological medicine and surgery, one optometrist, and one psychiatrist. Each member of the board shall be licensed to practice his or her profession pursuant to the Uniform Credentialing Act.

(2) Of the initial members of the board, two shall be appointed for four years, two shall be appointed for three years, and two shall be appointed for two

years. Thereafter, each member shall be appointed for a term of four years and until a successor is appointed and qualified. If a vacancy occurs for any reason other than the expiration of a term, the Director of Motor Vehicles may appoint a person licensed in the same type of professional practice as the member being replaced to serve out the unexpired term. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The board shall meet as necessary at the call of the director. At the initial meeting of the board following completion of the initial appointments, the board shall select from among its members a chairperson and shall designate any other officers or committees as it deems necessary. The board may select officers and committees annually or as necessary to fill vacancies and to carry out duties of the board.

Source: Laws 1994, LB 211, § 6; Laws 1996, LB 1044, § 281; Laws 2007, LB296, § 230; Laws 2007, LB463, § 1174.

Cross References

Uniform Credentialing Act, see section 38-101.

60-4,118.05 Age requirements; license issued; when.

(1) No operator's license referred to in section 60-4,118 shall, under any circumstances, be issued to any person who has not attained the age of seventeen years.

(2) No operator's license shall be issued to a person under eighteen years of age applying for an operator's license under section 60-4,118 unless such person:

(a) Has possessed a valid provisional operator's permit for at least a twelve-month period beginning on the date of issuance of such person's provisional operator's permit; and

(b) Has not accumulated three or more points pursuant to section 60-4,182 during the twelve-month period immediately preceding the date of the application for the operator's license.

(3) The department may waive the written examination and the driving test required under section 60-4,118 for any person seventeen to twenty-one years of age applying for his or her initial operator's license if he or she has been issued a provisional operator's permit. The department shall not waive the written examination and the driving test required under this section if the person is applying for a commercial driver's license or permit or if the operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the provisional operator's permit.

Source: Laws 2001, LB 38, § 31; Laws 2008, LB911, § 14.
Effective date July 18, 2008.

60-4,118.06 Ignition interlock permit; issued; when.

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subdivision (1) or (2) of section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the

Department of Motor Vehicles and installed an approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under section 60-498.02 shall be eligible for an ignition interlock permit as provided in such section. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle. The department shall not issue an ignition interlock permit to any person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 until at least one year of the operator's license revocation has elapsed.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

Source: Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5.
Operative date January 1, 2009.

60-4,119 Operators' licenses; state identification cards; color photograph or digital image; exception; procedure.

(1) All state identification cards and operators' licenses, except farm permits and except as otherwise provided in subsection (2) of this section and section 60-4,120, shall include a color photograph or a digital image of the cardholder or licensee as provided in section 60-484.02. State identification cards and operators' licenses shall be issued by the county treasurer or the Department of Motor Vehicles. The director shall negotiate and enter into a contract to provide the necessary equipment, supplies, and forms for the issuance of the licenses and cards. All costs incurred by the Department of Motor Vehicles under this section shall be paid by the state out of appropriations made to the department. All costs of taking the photographs or digital images shall be paid by the issuer from the fees provided to the issuer pursuant to section 60-4,115.

(2) A person who is out of the state at the time of renewal of his or her operator's license may apply for a license without a photograph upon payment of a fee as provided in section 60-4,115. The license may be issued at any time within one year after the expiration of the original license. Such application shall be made to the department, and the department shall issue the license.

(3) Any operator's license and any state identification card issued to a minor as defined in section 53-103, as such definition may be amended from time to time by the Legislature, shall be of a distinct designation, of a type prescribed by the director, from the operator's license or state identification card of a person who is not a minor.

Source: Laws 1977, LB 90, § 1; Laws 1978, LB 574, § 3; Laws 1981, LB 46, § 1; Laws 1982, LB 877, § 1; Laws 1984, LB 811, § 3; Laws 1986, LB 575, § 1; Laws 1989, LB 284, § 4; R.S.1943, (1988),

§ 60-406.04; Laws 1989, LB 285, § 69; Laws 1990, LB 980, § 9; Laws 1993, LB 201, § 1; Laws 1995, LB 467, § 13; Laws 1999, LB 704, § 19; Laws 2001, LB 574, § 13; Laws 2005, LB 1, § 6.

60-4,120 Operator's license; state identification card; duplicate or replacement.

(1) Except as provided in subsection (4) of this section for persons temporarily out of the state, any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may obtain a duplicate upon filing with the county treasurer or the Department of Motor Vehicles an application showing such loss and furnishing proof of identification in accordance with section 60-484. If satisfied that the loss is genuine, the issuer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate license or card. No more than two duplicates of a license or card may be issued in this manner. Upon the issuance of any duplicate or replacement license or card, the license or card from which the duplicate or replacement is issued shall be void.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the county treasurer for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the county treasurer for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address. The license or card shall be issued upon payment of the fee prescribed in section 60-4,115.

(3) In the event a mutilated and unreadable operator's license is held by any person duly licensed under the act or a mutilated and unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card upon showing the original mutilated or unreadable license or card to the county treasurer. A replacement license or card may be issued, without a photograph, to any person who is out of the state at the time of application for the replacement license or card. Such license or card shall state on its face that it shall become invalid thirty days after such person resumes residence in the state. If the county treasurer is satisfied that the license or card is mutilated or unreadable, the county treasurer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a replacement license or card.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may apply for a duplicate operator's license or card without a photograph by filing with the county treasurer an application and affidavit showing such loss. Upon the officer being satisfied that the loss is genuine, the officer shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate operator's license or card without a photograph. Upon the issuance of the duplicate, the original license or card shall be void.

(5) Any person holding a valid operator's license or state identification card without a photograph shall surrender such license or card to the treasurer of his or her county of residence within thirty days after resuming residency in

this state. After the thirty-day period, such license or card shall be considered invalid. Upon the timely surrender of the license or card and payment of the fee prescribed in section 60-4,115, such person shall be issued an operator's license or card with a color photograph or digital image of the licensee included.

(6) An application form for a replacement or duplicate operator's license or state identification card shall include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process?

(7) An applicant may obtain a replacement or duplicate operator's license or state identification card pursuant to subsection (1), (3), or (4) of this section by electronic means in a manner prescribed by the department. If the applicant has a digital image and digital signature preserved in the digital system, the replacement or duplicate shall be issued with the preserved digital image and digital signature.

Source: Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 201, § 2; Laws 1993, LB 126, § 1; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7.

60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions.

(1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid LPD-learner's permit, LPE-learner's permit, or SCP-school permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit, LPE-learner's permit, or SCP-school permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation including at least ten hours of motor vehicle operation between sunset and sunrise, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by the department. The written examination shall be waived if the applicant has been issued a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit and such permit is valid or has been expired for no more than one year. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation by the applicant of a form prescribed by the department showing successful completion of the driver safety course, the written examination and driving test may be waived. Upon presentation of the certificate, the written examination but not the driving test may be waived. The examiner shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

Source: Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4; Laws 2008, LB911, § 15.
Effective date July 18, 2008.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the examiner his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8) A qualified licensee as determined by the department who is twenty-one years of age or older and less than sixty-five years of age and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license and if his or her driving record abstract maintained in the records of the department shows that such person's license is not suspended, revoked, or canceled. Every licensee must apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 742, § 4; Laws 1990, LB 369, § 16; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16.
Effective date July 18, 2008.

60-4,123 LPD-learner's permit; application; issuance; operation restrictions.

(1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the department. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen years of age. The written examination may be waived for any person who has been issued an LPE-learner's permit, LPD-learner's permit, or SCP-school permit that has been expired for no more than one year.

(2) Upon successful completion of the written examination and the payment of a fee and surcharge as prescribed in section 60-4,115, the applicant shall be issued an LPD-learner's permit as provided in section 60-4,113. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been licensed by this state or another state and if he or she is actually occupying the seat beside the licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(b) The holder of an LPD-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only

as a secondary action when the holder of the LPD-learner's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

Source: Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5; Laws 2008, LB911, § 17.
Effective date July 18, 2008.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty.

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person lives a distance of one and one-half miles or more from the school he or she attends and either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or

another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18.
Effective date July 18, 2008.

60-4,126 Farm permit; issuance; violations; penalty.

Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of

the rules of the road and laws respecting the operation of motor vehicles upon the highways of this state. Any person under sixteen years of age but not less than thirteen years of age may obtain a temporary permit to operate such equipment for a six-month period after presentation to the department of a request for the temporary permit signed by the person's parent or guardian and payment of the fee and surcharge prescribed in section 60-4,115. After the expiration of the six-month period, it shall be unlawful for such person to operate such equipment upon the highways of this state unless he or she has been issued a farm permit under this section. The fee for an original, renewal, or duplicate farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

Source: Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19. Effective date July 18, 2008.

60-4,127 Motorcycle operation; Class M license required; issuance; examination.

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding forty-eight months.

(2)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Any applicant who qualifies for a Class M license shall be issued a license for such operation by the county treasurer as provided for the issuance of an operator's license. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the examiner's certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

Source: Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 821, § 13; Laws 1974, LB 328, § 2; Laws 1977, LB 90,

§ 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20.
Effective date July 18, 2008.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,131 Sections; applicability; terms, defined.

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means either:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to drive a commercial motor vehicle; or

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(c) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(d) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(e) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(f) State means a state of the United States and the District of Columbia;

(g) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(h) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle includes, but is not limited to, a cargo tank and a portable tank, as defined in

49 C.F.R. 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(i) United States means the fifty states and the District of Columbia; and

(j) Vehicle group means a class or type of vehicle with certain operating characteristics.

Source: Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7.

60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

(1) Active duty military personnel;

(2) Members of the military reserves, other than military technicians;

(3) Active duty United States Coast Guard personnel; and

(4) Members of the National Guard on active duty, including:

(a) Personnel on full-time National Guard duty;

(b) Personnel on part-time National Guard training; and

(c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

Source: Laws 2006, LB 853, § 13.

60-4,132 Purposes of sections.

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8.

60-4,137 Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a commercial driver's license or LPC-

learner's permit issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172.

Source: Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the Department of Motor Vehicles, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus; and

(f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6.

60-4,139 Commercial motor vehicle; nonresident; operating privilege.

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or LPC-learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. part 383 or an LPC-learner's permit issued by this state, (2) the license or permit is not suspended, revoked, or canceled, and (3) such nonresident is not disqualified from operating a commercial motor vehicle.

Source: Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10.

60-4,141 Operation outside classification of license; restrictions; violation; penalty.

(1) Except as provided in subsections (2) and (3) of this section, no person shall operate any class of commercial motor vehicle upon the highways of this state unless such person possesses a valid commercial driver's license authorizing the operation of the class of commercial motor vehicle being operated, except that (a) any person possessing a valid commercial driver's license authorizing the operation of a Class A commercial motor vehicle may lawfully operate any Class B or C commercial motor vehicle and (b) any person possessing a valid commercial driver's license authorizing the operation of a Class B commercial motor vehicle may lawfully operate a Class C commercial motor vehicle. No person shall operate upon the highways of this state any commercial motor vehicle which requires a specific endorsement unless such person possesses a valid commercial driver's license with such endorsement. No person possessing a restricted commercial driver's license shall operate upon the highways of this state any commercial motor vehicle to which such restriction is applicable.

(2) Any person holding an LPC-learner's permit may operate a commercial motor vehicle for learning purposes upon the highways of this state if accompanied by a person who is twenty-one years of age or older, who holds a commercial driver's license valid for the class of commercial motor vehicle being operated, and who occupies the seat beside the person for the purpose of giving instruction in the operation of the commercial motor vehicle. Any person holding an LPC-learner's permit may operate a commercial motor vehicle upon the highways of this state for purposes of taking a driving skills examination if accompanied by an examiner who is designated by the director under section 60-4,149 or employed by a third-party tester certified pursuant to section 60-4,158 and who occupies the seat beside the person for the purpose of giving the examination. A person holding an LPC-learner's permit shall not operate a commercial motor vehicle transporting hazardous materials.

(3) The provisions of subsection (1) of this section shall not apply to any nonresident until the state of residence of such nonresident begins the issuance of commercial drivers' licenses in conformance with the requirements of the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., and the Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. 31301 et seq., and section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and such nonresident is required by his or her state of residence to possess a commercial driver's license to operate a commercial motor vehicle. Any nonresident who is in this state for a period of thirty consecutive days or more shall apply for a Nebraska-issued commercial driver's license and shall surrender to the Department of Motor Vehicles any operator's license issued to such nonresident by any other state.

(4) Any person who operates a commercial motor vehicle upon the highways of this state in violation of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 91; Laws 1990, LB 980, § 15; Laws 1993, LB 7, § 4; Laws 1999, LB 704, § 28; Laws 2005, LB 76, § 10.

60-4,142 LPC-learner's permit; issuance.

Any resident may obtain, on a form to be prescribed by the director, an LPC-learner's permit from the county treasurer by making application to an examiner of the Department of Motor Vehicles. An applicant shall present proof to the examiner that he or she holds a valid Class O license or commercial driver's license or shall successfully complete the requirements for the Class O license before an LPC-learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155. Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing an LPC-learner's permit. The LPC-learner's permit shall be valid for a period of six months and shall be renewed only once within any two-year period. The county treasurer shall charge the fee prescribed in section 60-4,115 for the issuance or renewal of an LPC-learner's permit.

Source: Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11.

60-4,143 Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.

(1) No commercial driver's license or LPC-learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or LPC-learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state or while the person's operator's license is suspended, revoked, or canceled in this or any other state.

(3) The Department of Motor Vehicles shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's

license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be returned to that state by the director for cancellation.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11.

60-4,144 Commercial drivers' licenses; applications; examiner's certificate; contents; application; demonstration of knowledge and skills; information and documentation required.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. Application for any original or renewal commercial driver's license or application for any change of class of commercial motor vehicle, endorsement, or restriction may be made in a manner prescribed by the department. Such application may be made to an examiner in any county. The examiner shall personally conduct the examination of the applicant and deliver to each successful applicant an examiner's certificate containing the statements made pursuant to subdivision (b) of this subsection.

(b) The application or examiner's certificate shall include the voter registration portion pursuant to section 32-308, the advisement language required by subsection (5) of section 60-6,197, and the following:

(i) The full name, the current mailing address, and the residential address of the applicant, except that if the applicant is a program participant under the Address Confidentiality Act, he or she need not supply his or her residential address;

(ii) A physical description of the applicant, including sex, height, weight, and eye and hair colors;

(iii) The applicant's date of birth;

(iv) The applicant's social security number;

(v) The applicant's signature;

(vi) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(vii) The certification required pursuant to section 60-4,145 or 60-4,146;

(viii) Beginning September 30, 2005, the names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application;

(ix) The following specific questions:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness … yes … no

(II) experienced vertigo or multiple episodes of dizziness or fainting … yes … no

(III) experienced disorientation … yes … no

(IV) experienced seizures … yes … no

(V) experienced impairment of memory, memory loss … yes … no

Please explain: . . . . . .

(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of or impairment of foot, leg, hand, or arm; neurological or neuromuscular disease, etc.) ... yes ... no

Please explain: .....

(C) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? ... yes ... no

Please explain, including how the above affects your ability to drive: .....;

(x) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(xi) Do you wish to be an organ and tissue donor?

(xii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(xiii) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Application shall be made under oath or affirmation of the applicant.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. An applicant for any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and section 60-484. Such information and documentation shall include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate;

(b) The certification required pursuant to section 60-4,145 or 60-4,146; and

(c) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21.
Effective date July 18, 2008.

Cross References

Address Confidentiality Act, see section 42-1201.

60-4,145 Application; operation in interstate or foreign commerce; certification required.

Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to

section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 adopted pursuant to section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

Source: Laws 1989, LB 285, § 95; Laws 1990, LB 980, § 18; Laws 1999, LB 704, § 30; Laws 2006, LB 1007, § 7.

60-4,146 Application; operation in intrastate commerce; certification; restrictions.

(1) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this section shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(2) An applicant who certifies that he or she is exempt from the physical qualifications and examination requirements of 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363 shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board. A successful applicant shall be issued a commercial driver's license which restricts the holder to operating a commercial motor vehicle solely in intrastate commerce and which also indicates that the holder is exempt from the physical qualifications and examination requirements prescribed by 49 C.F.R. part 391. Two years after the initial issuance of such license and upon renewal, and every two years following renewal, the holder of the commercial driver's license shall present to the Department of Motor Vehicles upon request, on a form to be prescribed by the department, a statement from a physician detailing that based upon his or her examination of the applicant the medical or physical condition in existence prior to July 30, 1996, which would otherwise render the individual not qualified under federal standards, has not significantly worsened or that another nonqualifying medical or physical condition has not developed.

(3) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (1) of this section or who certifies that he or she is exempt from 49 C.F.R. part 391 under subsection (2) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness … yes … no

(ii) experienced vertigo or multiple episodes of dizziness or fainting … yes … no

(iii) experienced disorientation … yes … no

(iv) experienced seizures … yes … no

(v) experienced impairment of memory, memory loss … yes … no

Please explain: . . . . . .

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) … yes … no

Please explain: . . . . . .

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? … yes … no

Please explain, including how the above affects your ability to drive: . . . . . .

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8.

60-4,147.01 Driver's record; disclosure of convictions; requirements.

The Department of Motor Vehicles, a prosecutor, or a court must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.

Source: Laws 2005, LB 76, § 16.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal rules and regulations adopted and promulgated pursuant thereto as of January 1, 2008, for the

issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17.
Operative date July 1, 2008.

60-4,147.03 Hazardous materials endorsement; application process.

Beginning on an implementation date designated by the director, an applicant for a new, renewal, or transferred hazardous materials endorsement shall complete an application process including threat assessment, background check, fingerprints, and payment of fees as prescribed by 49 C.F.R. 1522, 1570, and 1572. Upon receipt of a determination of threat assessment from the Transportation Security Administration of the United States Department of Homeland Security or its agent, the department shall retain the application for not less than one year.

Source: Laws 2005, LB 76, § 18.

60-4,147.04 Hazardous materials endorsement; security threat assessment; department; powers.

Before a hazardous materials endorsement is issued, renewed, or transferred, the Department of Motor Vehicles must receive a determination of no security threat from the Transportation Security Administration of the United States Department of Homeland Security or its agent. The Department of Motor Vehicles shall cancel any existing commercial driver's license with a hazardous materials endorsement authorizing a driver to operate a vehicle transporting hazardous materials if it has received a determination that the holder of such endorsement does not meet the standards for security threat assessment as provided in 49 C.F.R. 1572 established by the Transportation Security Administration or its agent. The department may refuse to process an application for a new, renewal, or transferred commercial driver's license with a hazardous materials endorsement if:

(1) The applicant fails to submit to fingerprinting;

(2) The applicant fails to submit to required information and documentations;

(3) The applicant fails to pay the required fees;

(4) The applicant fails to pass any element of the hazardous materials portion of the commercial driver's license examination;

(5) The department receives a final determination of threat assessment from the Transportation Security Administration or its agent; or

(6) The department has not received from the Transportation Security Administration or its agent an advisement regarding the applicant's security threat status.

Source: Laws 2005, LB 76, § 19.

60-4,147.05 Hazardous materials endorsement; expiration; when.

(1) A commercial driver's license with a hazardous materials endorsement expires five years after the date of issuance of a determination of no security threat.

(2) When adding a hazardous materials endorsement to an existing Nebraska commercial driver's license before the expiration date of the existing license, the expiration date of the new commercial driver's license with the hazardous materials endorsement added shall be five years from the date of the determination of threat assessment. The license shall be issued upon payment of the appropriate prorated fee prescribed in section 60-4,115 for any additional time period added. If the date of the threat assessment plus five years is earlier than the expiration date of the commercial driver's license before the hazardous materials endorsement was added, the fee for a change of class, endorsement, or restriction shall apply.

(3) The Department of Motor Vehicles shall mail out a renewal notice for each such license at least sixty days before the expiration of the license. An applicant for renewal may initiate the renewal process after receiving such notice, but the renewal process shall be initiated at least thirty days before the expiration date in order to allow time to process the security threat assessment. The department may extend the expiration date of the endorsement for ninety days if the Transportation Security Administration of the United States Department of Homeland Security or its agent has not provided a determination of threat assessment before the expiration date. Any additional extension must be approved in advance by the designee of the Transportation Security Administration.

Source: Laws 2005, LB 76, § 20.

60-4,147.06 Hazardous material endorsement; transfer from another state; procedure.

An applicant who transfers from another state shall surrender his or her commercial driver's license with a hazardous material endorsement before the issuance of a commercial driver's license by the State of Nebraska. The renewal period established in the preceding state shall be the expiration date for the Nebraska license if a determination of threat assessment has been completed by the other state prior to issuance of the license. The Department of Motor Vehicles shall issue prorated licenses with appropriate prorated fees prescribed in section 60-4,115 to applicants transferring from another state. Applicants transferring from another state who have completed the determination of threat assessment shall not be required to undergo a determination of threat assessment until the determination of threat assessment established in the preceding state expires.

Source: Laws 2005, LB 76, § 21.

60-4,148 Commercial drivers' licenses; issuance.

(1) All commercial drivers' licenses shall be issued by the department as provided in section 60-4,149. Successful applicants shall pay the fee and surcharge prescribed in section 60-4,115.

(2) Any person making application to add or remove a class of commercial motor vehicle, any endorsement, or any restriction to or from a previously issued and outstanding commercial driver's license shall pay the fee and surcharge prescribed in section 60-4,115. The fee for an original or renewal seasonal permit to revalidate the restricted commercial motor vehicle operating

privilege to a previously issued and outstanding restricted commercial driver's license shall be the fee and surcharge prescribed in section 60-4,115.

Source: Laws 1989, LB 285, § 98; Laws 1990, LB 980, § 20; Laws 1991, LB 854, § 2; Laws 1993, LB 420, § 10; Laws 1997, LB 752, § 143; Laws 1998, LB 309, § 9; Laws 1999, LB 704, § 33; Laws 2001, LB 574, § 24; Laws 2008, LB911, § 22.
Effective date July 18, 2008.

60-4,149 Commercial drivers' licenses; examination; issuance; delivery.

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2) Except as provided for by section 60-4,157, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall, within thirty days, present his or her certificate to the county treasurer who shall immediately issue the commercial driver's license and collect the fee. The county treasurer shall report the issuance of commercial drivers' licenses and LPC-learners' permits to the department within five days after issuance.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The successful applicant shall, within thirty days, present his or her issuance certificate to the county treasurer who shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

Source: Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23.
Effective date July 18, 2008.

60-4,149.01 Commercial drivers' licenses; law examination; exceptions; waiver.

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2) A nonresident who holds a valid commercial driver's license from another state shall not be required to take the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the nonresident surrenders his or her valid out-of-state commercial driver's license to the commercial driver's license examiner.

(3) The commercial motor vehicle general knowledge examination shall be waived for the commercial driver's license applicant if the applicant holds a Nebraska-issued LPC-learner's permit that is valid or has been expired less than one year that is not canceled, suspended, revoked, or disqualified.

Source: Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13.

60-4,150 Commercial drivers' licenses; duplicate and replacement licenses; delivery.

(1) Any person holding a commercial driver's license who loses his or her license, who requires issuance of a replacement license because of a change of name or address, or whose license is mutilated or unreadable may obtain a duplicate or replacement commercial driver's license by filing an application and affidavit and by furnishing proof of identification in accordance with section 60-484.

(2) The application for a replacement license because of a change of name or address shall be made within sixty days after the change of name or address.

(3)(a) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. Upon the examiner being satisfied that a duplicate or replacement commercial driver's license should be issued, the applicant shall receive such license upon payment of the fee prescribed in section 60-4,115 to the county treasurer.

(b) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. A duplicate or replacement commercial driver's license shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Duplicate and replacement commercial drivers' licenses shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses as provided for by section 60-4,149. Upon issuance of any duplicate or replacement commercial driver's license, the commercial driver's license for which the duplicate or replacement license is issued shall be void.

Source: Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24.
Effective date July 18, 2008.

60-4,151 Commercial driver's license; restricted commercial driver's license; seasonal permit; form.

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof.

(b) This subdivision applies until the implementation date designated by the director pursuant to section 60-462.02. The commercial driver's license shall include the following information:

(i) The name and residential address of the holder;

(ii) The holder's color photograph or digital image;

(iii) A physical description of the holder, including sex, height, weight, and eye and hair colors;

(iv) The holder's date of birth;

(v) The holder's signature;

(vi) The class of commercial motor vehicle or vehicles which the holder is authorized to operate, including any endorsements or restrictions;

(vii) The dates between which the commercial driver's license is valid; and

(viii) The organ and tissue donor information specified in section 60-494.

(c) This subdivision applies beginning on the implementation date designated by the director pursuant to section 60-462.02. The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The seasonal permit shall be valid only when held in conjunction with a restricted commercial driver's license.

Source: Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25.
Effective date July 18, 2008.

60-4,159 Licensee; convictions; disqualifications; notification required; violation; penalty.

(1) Any person possessing a commercial driver's license issued by the Department of Motor Vehicles shall, within ten days of the date of conviction, notify the department of all convictions for violations of state law or local ordinance related to motor vehicle traffic control, except parking violations, when such convictions occur in another state.

(2) Any person possessing a commercial driver's license issued by the department who is convicted of violating any state law or local ordinance related to motor vehicle traffic control in this or any other state, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(3) Any person possessing a commercial driver's license issued by the department whose commercial driver's license is suspended, revoked, or canceled by

any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(4) Any person who fails to provide the notifications required in subsection (1), (2), or (3) of this section shall, upon conviction, be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 285, § 109; Laws 2005, LB 76, § 14.

60-4,163 Alcoholic liquor; prohibited operation; effect.

No person shall operate or be in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body. Any person who operates or is in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body or who refuses to submit to a test or tests to determine the alcoholic content of his or her blood or breath shall be placed out of service for twenty-four hours, shall be subject to disqualification as provided in sections 60-4,167 and 60-4,168, and shall be subject to prosecution for any violation of sections 60-6,196 and 60-6,197.

Any order to place a person out of service for twenty-four hours issued by a law enforcement officer shall be made pursuant to 49 C.F.R. 392.5(c) adopted pursuant to section 75-363.

Source: Laws 1989, LB 285, § 113; Laws 1993, LB 191, § 1; Laws 1993, LB 370, § 91; Laws 2001, LB 773, § 12; Laws 2006, LB 1007, § 9.

60-4,164.01 Alcoholic liquor; blood test; withdrawing requirements; damages; liability.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human

Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1997, LB 210, § 4; Laws 2000, LB 819, § 75; Laws 2000, LB 1115, § 6; Laws 2007, LB296, § 231.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-4,168 Disqualification; when.

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Driving a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, driving any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Driving a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, driving a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from driving a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

(4)(a) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days

if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a motor vehicle other than a commercial motor vehicle if the convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(7) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license in the operator's possession; and

(h) Beginning September 30, 2005, driving a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle.

Source: Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15.

(i) COMMERCIAL DRIVER TRAINING SCHOOLS

60-4,173 Terms, defined.

For purposes of sections 60-4,173 to 60-4,179:

(1) Driver training school or school means a business enterprise conducted by an individual, association, partnership, limited liability company, or corporation or a public or private educational facility which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination by the state for an operator's license, provisional operator's permit, or LPD-learner's or LPE-learner's permit and which charges consideration or tuition for such service or materials; and

(2) Instructor means any person who operates a driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a driver training school.

Source: Laws 1967, c. 380, § 1, p. 1191; R.S.1943, (1988), § 60-409.06; Laws 1989, LB 285, § 123; Laws 1993, LB 121, § 384; Laws 1998, LB 320, § 19; Laws 2008, LB279, § 1.
Effective date July 18, 2008.

60-4,174 Director; duties; rules and regulations; Commissioner of Education; assist.

(1) The director shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 60-4,173 to 60-4,179 as are necessary to protect the public. The director or his or her authorized representative shall examine applicants for Driver Training School and Instructor's

Licenses, license successful applicants, and inspect school facilities and equipment. The director shall administer and enforce such sections and may call upon the Commissioner of Education for assistance in developing and formulating appropriate rules and regulations.

(2) Rules and regulations which have been adopted and promulgated pursuant to this section prior to July 18, 2008, shall remain in effect and be applicable to all driver training schools and instructors until such time as new rules and regulations are adopted and promulgated.

Source: Laws 1967, c. 380, § 2, p. 1192; R.S.1943, (1988), § 60-409.07; Laws 1989, LB 285, § 124; Laws 2008, LB279, § 2.
Effective date July 18, 2008.

60-4,175 School; license; requirements.

No driver training school shall be established nor any existing school be continued unless such school applies for and obtains from the director a license in the manner and form prescribed by the director. Rules and regulations adopted and promulgated by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond, or other security in such sum and with such provisions as the director deems necessary to protect adequately the interests of the public, and such other matters as the director may prescribe.

Source: Laws 1967, c. 380, § 3, p. 1192; R.S.1943, (1988), § 60-409.08; Laws 1989, LB 285, § 125; Laws 2008, LB279, § 3.
Effective date July 18, 2008.

(j) STATE IDENTIFICATION CARDS

60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.

(1)(a) This subsection applies until the implementation date designated by the director pursuant to section 60-462.02. A state identification card shall be issued by the county treasurer after the person requesting the card (i) files an application or examiner's certificate with an examining officer, (ii) furnishes two forms of proof of identification described in section 60-484, and (iii) pays the fee prescribed in section 60-4,115 to the county treasurer. The state identification card shall contain the organ and tissue donor information specified in section 60-494.

(b) The application or examiner's certificate shall include the name, age, post office address, place of residence unless the applicant is a program participant under the Address Confidentiality Act, date of birth, sex, social security number, and physical description of the applicant, the voter registration portion pursuant to section 32-308, and the following:

(i) Do you wish to register to vote as part of this application process?

(ii) Do you wish to be an organ and tissue donor?

(iii) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(iv) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(c) Each state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

(2) This subsection applies beginning on the implementation date designated by the director pursuant to section 60-462.02. Each applicant for a state identification card shall provide the information and documentation required by section 60-484. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(3) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or examiner's certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or examiner's certificate or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

Source: Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309, § 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26.
Effective date July 18, 2008.

Cross References

Address Confidentiality Act, see section 42-1201.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated.

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

(1) Conviction of motor vehicle homicide - 12 points;

(2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;

(3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;

(4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;

(5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;

(6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

(7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;

(8) Negligent driving in violation of any city or village ordinance - 3 points;

(9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;

(10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

(a) Not more than five miles per hour over the speed limit - 1 point;

(b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;

(c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

(d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points; and

(13) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02, not including violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks - 1 point.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 174, § 1, p. 625; Laws 1959, c. 169, § 2, p. 617; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 381, § 4; Laws 1975, LB 328, § 1; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 430, § 3; Laws 1987, LB 224, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1.
Effective date July 18, 2008.

Cross References

Assessment of points when person is placed on probation, see section 60-497.01.

ARTICLE 5
MOTOR VEHICLE SAFETY RESPONSIBILITY

(b) ADMINISTRATION

Section
60-505.02. Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.

(b) ADMINISTRATION

60-505.02 Reinstatement of license or registration; filing of proof of financial responsibility; payment of fees.

(1) Whenever a license is revoked and the filing of proof of financial responsibility is, by the Motor Vehicle Safety Responsibility Act, made a prerequisite to reinstatement of eligibility for a new license, no license shall be issued unless the licensee, in addition to complying with the other provisions of the act, pays to the Department of Motor Vehicles a reinstatement fee of one hundred twenty-five dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

(2) Whenever a license is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of such license or to the issuance of a new license, no such license shall be reinstated or new license issued unless the licensee, in addition to complying with the other provisions of the act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(3) When a registration is suspended and the filing of proof of financial responsibility is, by the act, made a prerequisite to reinstatement of the

registration, no such registration shall be reinstated or new registration issued unless the registrant, in addition to complying with the act and the Motor Vehicle Registration Act, pays to the department a fee of fifty dollars. The fees paid pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1959, c. 298, § 4, p. 1110; Laws 1980, LB 672, § 1; Laws 1993, LB 491, § 16; Laws 2001, LB 38, § 40; Laws 2005, LB 274, § 236.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 6
NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

Section
60-601. Rules, how cited.
60-605. Definitions, where found.
60-610. Authorized emergency vehicle, defined.
60-614.01. Continuous alcohol monitoring device, defined.
60-624.01. Idle reduction technology, defined.
60-649.01. Property-carrying unit, defined.
60-653. Registration, defined.

(c) PENALTY AND ENFORCEMENT PROVISIONS

60-682.01. Speed limit violations; fines.
60-683. Peace officers; duty to enforce rules and laws; powers.
60-685. Misdemeanor or traffic infraction; lawful complaints.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-696. Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.
60-697. Accident; driver's duty; penalty.
60-698. Accident; failure to stop; penalty.
60-6,100. Accidents; reports required of garages and repair shops.
60-6,104. Accidents; body fluid; samples; test; report.
60-6,107. Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,114. Authorized emergency vehicles; privileges; conditions.

(f) TRAFFIC CONTROL DEVICES

60-6,126.01. Road name signs; authorized.

(g) USE OF ROADWAY AND PASSING

60-6,144. Restrictions on use of controlled-access highway.

(j) TURNING AND SIGNALS

60-6,162. Signals given by hand and arm or signal lights; signal lights required; exceptions.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

60-6,164. Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.

(n) SPEED RESTRICTIONS

60-6,186. Speed; maximum limits; signs.

Section

(y) SIZE, WEIGHT, AND LOAD

(bb) SPECIAL RULES FOR MOPEDS

(dd) SPECIAL RULES FOR SNOWMOBILES

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

(gg) SMOKE EMISSIONS AND NOISE

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,377 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 872, § 5; Laws 1992, LB 291, § 14; R.S.Supp.,1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14;

Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB736, section 6, with LB756, section 18, to reflect all amendments.

Note: Changes made by LB756 became operative July 18, 2008. Changes made by LB736 became operative January 1, 2009.

60-605 Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19.
Operative date July 18, 2008.

60-610 Authorized emergency vehicle, defined.

Authorized emergency vehicle shall mean such fire department vehicles, police vehicles, rescue vehicles, and ambulances as are publicly owned, such other publicly or privately owned vehicles as are designated by the Director of Motor Vehicles, and such publicly owned military vehicles of the National Guard as are designated by the Adjutant General pursuant to section 55-133.

Source: Laws 1993, LB 370, § 106; Laws 2008, LB196, § 2.
Effective date July 18, 2008.

60-614.01 Continuous alcohol monitoring device, defined.

Continuous alcohol monitoring device means a portable device capable of automatically and periodically testing and recording alcohol consumption levels and automatically and periodically transmitting such information and tamper attempts regarding such device, regardless of the location of the person being monitored.

Source: Laws 2006, LB 925, § 6.

60-624.01 Idle reduction technology, defined.

Idle reduction technology means any device or system of devices that is installed on a heavy-duty diesel-powered on-highway truck or truck-tractor and is designed to provide to such truck or truck-tractor those services, such as heat, air conditioning, or electricity, that would otherwise require the operation of the main drive engine while the truck or truck-tractor is temporarily parked or remains stationary.

Source: Laws 2008, LB756, § 20.
Operative date July 18, 2008.

60-649.01 Property-carrying unit, defined.

Property-carrying unit shall mean any part of a commercial motor vehicle combination, except the truck-tractor, used to carry property and shall include trailers and semitrailers.

Source: Laws 2006, LB 853, § 16.

60-653 Registration, defined.

Registration shall mean the registration certificate or certificates and license plates issued under the Motor Vehicle Registration Act.

Source: Laws 1993, LB 370, § 149; Laws 2005, LB 274, § 237.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(c) PENALTY AND ENFORCEMENT PROVISIONS

60-682.01 Speed limit violations; fines.

(1) Any person who operates a vehicle in violation of any maximum speed limit established for any highway or freeway is guilty of a traffic infraction and upon conviction shall be fined:

(a) Ten dollars for traveling one to five miles per hour over the authorized speed limit;

(b) Twenty-five dollars for traveling over five miles per hour but not over ten miles per hour over the authorized speed limit;

(c) Seventy-five dollars for traveling over ten miles per hour but not over fifteen miles per hour over the authorized speed limit;

(d) One hundred twenty-five dollars for traveling over fifteen miles per hour but not over twenty miles per hour over the authorized speed limit;

(e) Two hundred dollars for traveling over twenty miles per hour but not over thirty-five miles per hour over the authorized speed limit; and

(f) Three hundred dollars for traveling over thirty-five miles per hour over the authorized speed limit.

(2) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a maintenance, repair, or construction zone established pursuant to section 60-6,188. For purposes of this subsection, maintenance, repair, or construction zone means (a) the portion of a highway identified by posted or moving signs as being under maintenance, repair, or construction or (b) the portion of a highway identified by maintenance, repair, or construction zone speed limit signs displayed pursuant to section 60-6,188. The maintenance, repair, or construction zone starts at the location of the first sign identifying the maintenance, repair, or construction zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.

(3) The fines prescribed in subsection (1) of this section shall be doubled if the violation occurs within a school crossing zone as defined in section 60-658.01.

Source: Laws 1996, LB 901, § 11; Laws 1997, LB 91, § 4; Laws 2008, LB621, § 2.
Effective date July 18, 2008.

60-683 Peace officers; duty to enforce rules and laws; powers.

All peace officers are hereby specifically directed and authorized and it shall be deemed and considered a part of the official duties of each of such officers to enforce the provisions of the Nebraska Rules of the Road, including the specific enforcement of maximum speed limits, and any other law regulating the operation of vehicles or the use of the highways. To perform the official duties imposed by this section, the Superintendent of Law Enforcement and Public Safety and all officers of the Nebraska State Patrol shall have the powers stated in section 81-2005. All other peace officers shall have the power:

(1) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any provision of the laws of this state relating to misdemeanors or felonies, if and when designated or called upon to do so as provided by law;

(3) At all times to direct all traffic in conformity with law or, in the event of a fire or other emergency or in order to expedite traffic or insure safety, to direct traffic as conditions may require;

(4) When in uniform, to require the driver of a vehicle to stop and exhibit his or her operator's license and registration certificate issued for the vehicle and submit to an inspection of such vehicle and the license plates and registration certificate for the vehicle and to require the driver of a motor vehicle to present the vehicle within five days for correction of any defects revealed by such motor vehicle inspection as may lead the inspecting officer to reasonably believe that such motor vehicle is being operated in violation of the statutes of Nebraska or the rules and regulations of the Director of Motor Vehicles;

(5) To inspect any vehicle of a type required to be registered according to law in any public garage or repair shop or in any place where such a vehicle is held for sale or wrecking;

(6) To serve warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways; and

(7) To investigate traffic accidents for the purpose of carrying on a study of traffic accidents and enforcing motor vehicle and highway safety laws.

Source: Laws 1939, c. 78, § 1, p. 317; Laws 1941, c. 176, § 13, p. 693; C.S.Supp.,1941, § 39-11,119; R.S.1943, § 39-7,124; Laws 1989, LB 285, § 10; R.S.Supp.,1992, § 39-6,192; Laws 1993, LB 370, § 179; Laws 1996, LB 901, § 6; Laws 2005, LB 274, § 238.

Cross References

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

60-685 Misdemeanor or traffic infraction; lawful complaints.

When a person has been charged with any act declared to be a misdemeanor or traffic infraction by the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Motor Vehicle Safety Responsibility Act, or the Nebraska Rules of the Road, and is issued a citation meeting the requirements

prescribed by the Supreme Court, if such citation includes the information and is sworn to as required by the laws of this state, then such citation when filed with a court having jurisdiction shall be deemed a lawful complaint for the purpose of prosecution.

Source: Laws 1973, LB 45, § 107; Laws 1974, LB 829, § 10; R.S.1943, (1988), § 39-6,107; Laws 1993, LB 370, § 181; Laws 2005, LB 274, § 239.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-696 Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.

(1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court shall order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of one year from the date ordered by the court.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978,

LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB561, § 1.

Cross References

Operator's license, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

60-697 Accident; driver's duty; penalty.

The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (1) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (2) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (3) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person. Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

60-698 Accident; failure to stop; penalty.

Every person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of a Class IIIA felony. The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court, and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9.

60-6,100 Accidents; reports required of garages and repair shops.

The person in charge of any garage or repair shop to which is brought any vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the nearest police station or sheriff's office within twenty-four hours after such vehicle is received, giving the engine

number, if applicable, the license number, and the name and address of the owner or operator of such vehicle.

Source: Laws 1931, c. 110, § 30, p. 315; C.S.Supp.,1941, § 39-1161; R.S.1943, § 39-765; R.S.1943, (1988), § 39-6,104.05; Laws 1993, LB 370, § 196; Laws 2005, LB 274, § 241.

60-6,104 Accidents; body fluid; samples; test; report.

All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

Source: Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB296, § 232.

60-6,107 Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations.

(1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Roads shall adopt and promulgate rules and regulations which shall provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

Source: Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB296, § 233.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,114 Authorized emergency vehicles; privileges; conditions.

(1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:

(a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and

(b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:

(i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and

(ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.

(2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as

may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.

(3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.

(4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

Source: Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

(f) TRAFFIC CONTROL DEVICES

60-6,126.01 Road name signs; authorized.

Local authorities may place and maintain road name signs on the same sign posts as signs under the jurisdiction of the Department of Roads when highway visibility would not be impaired. Local authorities may also place and maintain road name signs in the right-of-way of any highway under the jurisdiction of the Department of Roads when highway visibility would not be impaired.

Source: Laws 2006, LB 853, § 17.

(g) USE OF ROADWAY AND PASSING

60-6,144 Restrictions on use of controlled-access highway.

Use of a freeway and entry thereon by the following shall be prohibited at all times except by permit from the Department of Roads or from the local authority in the case of freeways not under the jurisdiction of the department:

(1) Pedestrians except in areas specifically designated for that purpose;

(2) Hitchhikers or walkers;

(3) Vehicles not self-propelled;

(4) Bicycles, motor-driven cycles, motor scooters not having motors of more than ten horsepower, and electric personal assistive mobility devices;

(5) Animals led, driven on the hoof, ridden, or drawing a vehicle;

(6) Funeral processions;

(7) Parades or demonstrations;

(8) Vehicles, except emergency vehicles, unable to maintain minimum speed as provided in the Nebraska Rules of the Road;

(9) Construction equipment;

(10) Implements of husbandry, whether self-propelled or towed;

(11) Vehicles with improperly secured attachments or loads;

(12) Vehicles in tow, when the connection consists of a chain, rope, or cable, except disabled vehicles which shall be removed from such freeway at the nearest interchange;

(13) Vehicles with deflated pneumatic, metal, or solid tires or continuous metal treads except maintenance vehicles;

(14) Any person standing on or near a roadway for the purpose of soliciting or selling to an occupant of any vehicle; or

(15) Overdimensional vehicles.

Source: Laws 1973, LB 45, § 33; R.S.1943, (1988), § 39-633; Laws 1993, LB 370, § 240; Laws 1993, LB 575, § 8; Laws 2002, LB 1105, § 457; Laws 2006, LB 853, § 18.

(j) TURNING AND SIGNALS

60-6,162 Signals given by hand and arm or signal lights; signal lights required; exceptions.

(1) Any stop signal or turnsignal required by the Nebraska Rules of the Road shall be given either by means of the hand and arm or by signal lights except as otherwise provided in this section.

(2) With respect to any motor vehicle having four or more wheels manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, any required signal shall be given by the appropriate signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle or trailer exceeds twenty-four inches. Such measurement shall apply to any single vehicle or trailer and to any combination of vehicles or trailers. This subsection shall not apply during daylight hours to fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations.

(3) Under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle of such signaling driver for one hundred feet, the required signals shall be given by such a light or device as required by this section.

Source: Laws 1973, LB 45, § 53; Laws 1987, LB 216, § 1; R.S.1943, (1988), § 39-653; Laws 1993, LB 370, § 258; Laws 1995, LB 59, § 1; Laws 2003, LB 238, § 5; Laws 2005, LB 274, § 242.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

60-6,164 Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.

(1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the

shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Roads or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

Source: Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB561, § 2.

(n) SPEED RESTRICTIONS

60-6,186 Speed; maximum limits; signs.

(1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district;

(c) Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;

(d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;

(e) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Roads may, where existing design and traffic conditions allow, according to an engineering study, authorize a speed limit five miles per hour greater;

(f) Sixty-five miles per hour upon an expressway that is part of the state highway system;

(g) Sixty-five miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and

(h) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty miles per hour for:

(i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and

(ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Roads or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

Source: Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB35, § 2.

Cross References

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

60-6,187 Special speed limitations; motor vehicle towing a mobile home; motor-driven cycle.

(1) No person shall operate any motor vehicle when towing a mobile home at a rate of speed in excess of fifty miles per hour.

(2)(a) A person may operate any motor-driven cycle at a speed in excess of thirty-five miles per hour upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(b) A person may operate any motor-driven cycle at a speed in excess of twenty-five miles per hour, but not more than thirty-five miles per hour, upon a roadway at nighttime if such motor-driven cycle is equipped with a headlight or headlights capable of revealing a person or vehicle in such roadway at least one hundred feet ahead, but less than three hundred feet ahead, and with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

(c) A person shall not operate any motor-driven cycle upon a roadway at nighttime if the headlight or headlights do not reveal a person or vehicle in such roadway at least one hundred feet ahead, or the taillight is not visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear of such motor-driven cycle.

Source: Laws 1973, LB 45, § 66; Laws 1974, LB 873, § 2; Laws 1975, LB 381, § 2; Laws 1977, LB 256, § 2; Laws 1979, LB 23, § 2; Laws 1987, LB 430, § 2; Laws 1987, LB 504, § 2; Laws 1990, LB 369, § 1; R.S.Supp.,1992, § 39-666; Laws 1993, LB 370, § 283; Laws 1996, LB 901, § 8; Laws 2005, LB 80, § 1.

Cross References

Livestock forage vehicles, speed limits, see section 60-6,305.
Mopeds, maximum speed, see section 60-6,313.
Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,197.01 Driving under influence of alcoholic liquor or drug; second and subsequent violations; restrictions on motor vehicles.

(1) Upon conviction for a second or subsequent violation of section 60-6,196 or 60-6,197, the court shall impose either of the following restrictions:

(a)(i) The court shall order all motor vehicles owned by the person so convicted immobilized at the owner's expense for a period of time not less than five days and not more than eight months and shall notify the Department of Motor Vehicles of the period of immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien on the motor vehicle executed prior to such immobilization when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such lien. If a person tows and stores a motor vehicle pursuant to this subdivision at the direction of a peace officer or the court and has a lien upon such motor vehicle while it is in his or her possession for reasonable towing and storage charges, the person towing the vehicle has the right to retain such motor vehicle until such lien is paid. For purposes of this subdivision, immobilized or immobilization means revocation or suspension, at the discretion of the court, of the registration of such motor vehicle or motor vehicles, including the license plates; and

(ii)(A) Any immobilized motor vehicle shall be released by the court without any legal or physical restraints to any registered owner who is not the registered owner convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 if an affidavit is submitted to the court by such registered owner stating that the affiant is employed, that the motor vehicle subject to immobilization is necessary to continue that employment, that such employment is necessary for the well-being of the affiant's dependent children or parents, that the affiant will not authorize the use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, that affiant will immediately report to a local law enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant to have been convicted of a second or subsequent conviction of section 60-6,196 or 60-6,197, and that failure to release the motor vehicle would cause undue hardship to the affiant.

(B) A registered owner who executes an affidavit pursuant to subdivision (1)(a)(ii)(A) of this section which is acted upon by the court and who fails to immediately report an unauthorized use of the motor vehicle which is the subject of the affidavit is guilty of a Class IV misdemeanor and may not file any additional affidavits pursuant to subdivision (1)(a)(ii)(A) of this section.

(C) The department shall adopt and promulgate rules and regulations to implement the provisions of subdivision (1)(a) of this section; or

(b) As an alternative to subdivision (1)(a) of this section, the court shall order the convicted person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an ignition interlock device on each of the motor vehicles owned or operated by the convicted person if he or she was sentenced

to an operator's license revocation of at least one year and has completed at least one year of such revocation. No ignition interlock permit may be issued until sufficient evidence is presented to the department that an ignition interlock device is installed on each vehicle and that the applicant is eligible for use of an ignition interlock device. The installation of an ignition interlock device shall be for a period not less than six months commencing upon the end of such year of the operator's license revocation. Notwithstanding any other provision of law, if the owner was convicted of a second or subsequent violation of section 60-6,196 or 60-6,197, no ignition interlock device or ignition interlock permit shall be ordered by any court or state agency under any circumstances until at least one year of the operator's license revocation shall have elapsed.

(2) In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of section 60-6,196 or 60-6,197 to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted of a second or subsequent violation unless the installation of an ignition interlock device is also required.

Source: Laws 1999, LB 585, § 7; Laws 2001, LB 38, § 49; Laws 2006, LB 925, § 10; Laws 2008, LB736, § 7.
Operative date January 1, 2009.

60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 60-6,197.03. For purposes of sentencing under section 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the twelve-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of section 60-6,196;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196;

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,196; or

(D) Any conviction for a violation of section 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of section 60-6,197;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,197;

(b) Prior conviction includes any conviction under section 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with any of such sections, as such sections or city or village ordinances existed at the

time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Twelve-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2.

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. If the court orders the person's operator's license impounded, the court shall also order that the person shall not operate a motor vehicle for a period of six months and shall not order the installation of an ignition interlock device or an ignition interlock permit. If the court orders the person's operator's license revoked, the revocation period shall be for six months and the court shall order that after thirty days of no driving, the person may apply for an ignition interlock permit for the remainder of the revocation period and shall have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05, and such order

of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court and shall order that after sixty days of no driving, the person may apply for an ignition interlock permit for the remainder of the revocation period and shall have an ignition interlock device installed on any motor vehicle he or she operates during the remainder of the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05, and such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final

judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8. Operative date January 1, 2009.

60-6,197.06 Operating motor vehicle during revocation period; penalties.

Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to subdivision (4), (5), (6), (7), (8), (9), or (10) of section 60-6,197.03 or section 60-6,198, or pursuant to subdivision (2)(c) or (2)(d) of section 60-6,196 or subdivision (4)(c) or (4)(d) of section 60-6,197 as such subdivisions existed prior to July 16, 2004, shall be guilty of a Class IV felony, and the court shall, as part of the judgment

of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. If such person has had a conviction under this section or under subsection (6) of section 60-6,196 or subsection (7) of section 60-6,197, as such subsections existed prior to July 16, 2004, prior to the date of the current conviction under this section, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

Source: Laws 2004, LB 208, § 16; Laws 2006, LB 925, § 12.

60-6,197.08 Driving under influence of alcoholic liquor or drugs; presentence evaluation.

Any person who has been convicted of driving while intoxicated shall, during a presentence evaluation, submit to and participate in an alcohol assessment by a licensed alcohol and drug counselor. The alcohol assessment shall be paid for by the person convicted of driving while intoxicated. At the time of sentencing, the judge, having reviewed the assessment results, may then order the convicted person to follow through on the alcohol assessment results at the convicted person's expense in addition to any penalties deemed necessary.

Source: Laws 2004, LB 208, § 18; Laws 2006, LB 925, § 13.

60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation, suspended sentence, or employment driving permit.

Notwithstanding the provisions of section 60-498.02 or 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation, a suspended sentence, or an employment driving permit authorized under subsection (2) of section 60-498.02 for either violation committed in this state.

Source: Laws 2006, LB 925, § 14.

60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court

and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child shall have the same meaning as in section 28-396.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

60-6,201 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.

(1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the federal Social Security Act, as such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permitholder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the

department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; C.S.Supp.,1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 872, § 2; Laws 1992, LB 291, § 6; R.S.Supp.,1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB296, § 234.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-6,202 Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.

(1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; C.S.Supp.,1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp.,1992,

§ 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB296, § 235.

Cross References

Health Care Facility Licensure Act, see section 71-401.

60-6,209 License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee.

(1) Any person whose operator's license has been revoked pursuant to a conviction for a violation of sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,204 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her eligibility for an operator's license. Upon receipt of the application, the Director of Motor Vehicles shall review the application if such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

(a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;

(b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;

(c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;

(d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and

(e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified or licensed by the state.

(5) If the Board of Pardons reinstates such person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, such reinstatement or reprieve may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the person's eligibility for an operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's eligibility for an operator's license or orders a reprieve of such person's motor vehicle operator's license revocation, the board shall notify the Department of Motor Vehicles of the reinstatement or reprieve. Such person may apply for an operator's license upon payment of a fee of one hundred twenty-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit seventy-five dollars of each fee to the General Fund and fifty dollars of each fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 1992, LB 291, § 10; R.S.Supp.,1992, § 39-669.19; Laws 1993, LB 370, § 304; Laws 1998, LB 309, § 18; Laws 2001, LB 38, § 54; Laws 2003, LB 209, § 13; Laws 2004, LB 208, § 12; Laws 2004, LB 1083, § 102; Laws 2008, LB736, § 9.
Operative date January 1, 2009.

60-6,210 Blood sample; results of chemical test; admissible in criminal prosecution; disclosure required.

(1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution for a violation punishable under subdivision (3)(b) or (c) of section 28-306 or a violation of section 28-305, 60-6,196, or 60-6,198 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a peace officer requested the driver to submit to a test as provided in section 60-6,197 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under subdivision (3)(b) or (c) of section 28-306 or section 28-305, 60-6,196, or 60-6,198 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who

requests the results for use in such a criminal prosecution under the laws of Nebraska.

Source: Laws 1992, LB 872, § 3; R.S.Supp.,1992, § 39-669.20; Laws 1993, LB 370, § 305; Laws 2004, LB 208, § 20; Laws 2006, LB 925, § 15.

60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs.

(1)(a) If an order of probation is granted under section 60-6,196 or 60-6,197, as such sections existed prior to July 16, 2004, or section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, as such sections existed on or after July 16, 2004, the court may order the defendant to install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than the levels prescribed in section 60-6,196.

(b) If the court orders an ignition interlock permit and installation of an ignition interlock device pursuant to subdivision (1) or (2) of section 60-6,197.03, the device shall be of a type approved by the director and shall be installed on each motor vehicle operated by the defendant. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than the levels prescribed in section 60-6,196.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (3) of section 60-498.02.

(4) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the Department of Motor Vehicles to issue to the defendant an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device. Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation of an ignition-interlock-equipped motor vehicle only from the defendant's residence to the defendant's place of employment, school, or alcohol treatment program or an ignition interlock service facility. Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a license reinstatement is made.

(5) A person who tampers with or circumvents an ignition interlock device installed under a court order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order made pursuant to this section shall be guilty of a Class II misdemeanor.

(6) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(7) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2) of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(8) The director shall adopt and promulgate rules and regulations to approve ignition interlock devices and the means of installation of the devices.

(9) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device pursuant to section 60-6,211.05 or 83-1,127.02 unless the court or the Board of Pardons has determined the person to be indigent.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10.
Operative date January 1, 2009.

60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(d) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) It is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6.

60-6,211.09 Continuous alcohol monitoring devices; Office of Probation Administration; duties.

The Office of Probation Administration shall adopt and promulgate rules and regulations to approve the use of continuous alcohol monitoring devices by individuals sentenced to probation for violating section 60-6,196 or 60-6,197.

Source: Laws 2006, LB 925, § 17.

60-6,211.10 Ignition Interlock Device Fund; created; use; investment.

The Ignition Interlock Device Fund is created. The Office of Probation Administration shall use the money in the fund for the costs of installing and removing and one-half of the cost of maintaining an ignition interlock device for an indigent defendant. The Office of Probation Administration shall use no more than five percent of the fund revenue in each fiscal year for purposes of administering the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB736, § 11.
Operative date January 1, 2009.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,226 Brake and turnsignal light requirements; exceptions; signaling requirements.

(1) Any motor vehicle having four or more wheels which is manufactured or assembled, whether from a kit or otherwise, after January 1, 1954, designed or used for the purpose of carrying passengers or freight, or any trailer, in use on a highway, shall be equipped with brake and turnsignal lights in good working order.

(2) Motorcycles, motor-driven cycles, motor scooters, bicycles, electric personal assistive mobility devices, vehicles used solely for agricultural purposes, vehicles not designed and intended primarily for use on a highway, and, during

daylight hours, fertilizer trailers as defined in section 60-326 and implements of husbandry designed primarily or exclusively for use in agricultural operations shall not be required to have or maintain in working order signal lights required by this section, but they may be so equipped. The operator thereof shall comply with the requirements for utilizing hand and arm signals or for utilizing such signal lights if the vehicle is so equipped.

Source: Laws 1993, LB 370, § 322; Laws 1995, LB 59, § 4; Laws 2002, LB 1105, § 458; Laws 2003, LB 238, § 6; Laws 2005, LB 274, § 243.

Cross References

Hand and arm signals, see sections 60-6,162 and 60-6,163.

60-6,227 Repealed. Laws 2008, LB 756, § 34.

60-6,230 Lights; rotating or flashing; colored lights; when permitted.

(1) Except as provided in sections 60-6,231 to 60-6,233 and subsections (4) and (5) of this section, no person shall operate any motor vehicle or any equipment of any description on any highway in this state with any rotating or flashing light.

(2) Except for stop lights and directional signals, which may be red, yellow, or amber, no person shall display any color of light other than red on the rear of any motor vehicle or any equipment of any kind on any highway within this state.

(3) Amber rotating or flashing lights shall be displayed on vehicles of the Military Department for purpose of convoy control when on any state emergency mission.

(4) A single flashing white light may be displayed on the roof of school transportation vehicles during extremely adverse weather conditions.

(5) Blue and amber rotating or flashing lights may be displayed on vehicles used for the movement of snow when operated by the Department of Roads or any local authority.

Source: Laws 1969, c. 327, § 2, p. 1170; C.S.Supp.,1972, § 39-788.01; Laws 1979, LB 127, § 1; R.S.1943, (1988), § 39-6,148; Laws 1993, LB 370, § 326; Laws 1995, LB 59, § 6; Laws 2008, LB196, § 3.
Effective date July 18, 2008.

60-6,231 Flashing or rotating lights; authorized emergency vehicles; colors permitted.

A flashing or rotating red light or red and white light shall be displayed on any authorized emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this section, an authorized emergency vehicle shall include funeral escort vehicles.

Source: Laws 1969, c. 327, § 3, p. 1171; C.S.Supp.,1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp.,1992, § 39-6,149; Laws 1993, LB 370, § 327; Laws 2008, LB196, § 4.
Effective date July 18, 2008.

60-6,232 Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, or (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1.

(r) BRAKES

60-6,246 Trailers; brake requirements; safety chains; when required.

(1) All commercial trailers with a carrying capacity of more than ten thousand pounds and semitrailers shall be equipped on each wheel with brakes that can be operated from the driving position of the towing vehicle.

(2) Cabin trailers and recreational trailers having a gross loaded weight of three thousand pounds or more but less than six thousand five hundred pounds shall be equipped with brakes on at least two wheels, and such trailers with a gross loaded weight of six thousand five hundred pounds or more shall be equipped with brakes on each wheel. The brakes shall be operable from the driving position of the towing vehicle. Such trailers shall also be equipped with a breakaway, surge, or impulse switch on the trailer so that the trailer brakes are activated if the trailer becomes disengaged from the towing vehicle.

(3) Cabin trailers, recreational trailers, and utility trailers, when being towed upon a highway, shall be securely connected to the towing vehicle by means of two safety chains or safety cables in addition to the hitch or other primary connecting device. Such safety chains or safety cables shall be so attached and shall be of sufficient breaking load strength so as to prevent any portion of such trailer drawbar from touching the roadway if the hitch or other primary connecting device becomes disengaged from the towing vehicle.

(4) For purposes of this section:

(a) Recreational trailer means a vehicular unit without motive power primarily designed for transporting a motorboat as defined in section 37-1204 or a vessel as defined in section 37-1203; and

(b) Utility trailer has the same meaning as in section 60-358.

Source: Laws 1959, c. 165, § 2, p. 604; Laws 1972, LB 1164, § 1; Laws 1973, LB 368, § 1; R.S.Supp.,1972, § 39-773.01; Laws 1989, LB

695, § 2; R.S.Supp.,1992, § 39-6,134; Laws 1993, LB 370, § 342; Laws 1993, LB 575, § 30; Laws 1995, LB 6, § 1; Laws 2005, LB 274, § 244.

(s) TIRES

60-6,251 Pneumatic tires; regrooving prohibited; exception.

(1) No person shall alter the traction surface of pneumatic tires by regrooving.

(2) No person shall knowingly operate on any highway in this state any motor vehicle on which the traction surface of any pneumatic tire thereof has been regrooved. No person shall sell, exchange, or offer for sale or exchange such a tire.

(3) This section shall not apply to regrooved commercial vehicle tires which are designed and constructed in such a manner that any regrooving complies with the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363.

Source: Laws 1987, LB 504, § 4; R.S.1943, (1988), § 39-6,131.08; Laws 1993, LB 370, § 347; Laws 2006, LB 1007, § 10.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,255 Windshield and windows; nontransparent material prohibited; windshield equipment; requirements.

(1) Every motor vehicle registered pursuant to the Motor Vehicle Registration Act, except motorcycles, shall be equipped with a front windshield.

(2) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster, or other nontransparent material upon the front windshield, side wing vents, or side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law. The front windshield, side wing vents, and side or rear windows may have a visor or other shade device which is easily moved aside or removable, is normally used by a motor vehicle operator during daylight hours, and does not impair the driver's field of vision.

(3) Every windshield on a motor vehicle, other than a motorcycle, shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

Source: Laws 1931, c. 110, § 41, p. 318; C.S.Supp.,1941, § 39-1172; R.S.1943, § 39-776; Laws 1977, LB 314, § 3; Laws 1987, LB 504, § 7; Laws 1989, LB 155, § 1; R.S.Supp.,1992, § 39-6,136; Laws 1993, LB 370, § 351; Laws 2005, LB 274, § 245.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,261 Windshield and windows; funeral vehicles; exception.

Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

Source: Laws 1989, LB 155, § 6; R.S.Supp.,1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB463, § 1175.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,265 Occupant protection system, defined.

For purposes of sections 60-6,266 to 60-6,273, occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (1) restrains drivers and passengers and (2) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2008, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year.

Source: Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6; Laws 2008, LB756, § 21. Operative date July 1, 2008.

60-6,267 Use of restraint system or occupant protection system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2008, and which is correctly installed in such vehicle; and

(b) All children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2008, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(2) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(3) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this section when operating such authorized emergency vehicles pursuant to their employment.

(4) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(5) The Department of Motor Vehicles shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the

availability of distribution and discount programs for child passenger restraint systems.

(6) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22.
Operative date July 1, 2008.

(x) MISCELLANEOUS EQUIPMENT PROVISIONS

60-6,284 Towing; drawbars or other connections; length; red flag required, when.

The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed fifteen feet in length from one vehicle to the other, except a vehicle being towed with a connection device that is an integral component of the vehicle and is designed to attach to a lead unit with construction in such a manner as to allow articulation at the attachment point on the chassis of the towed vehicle but not to allow lateral or side-to-side movement. Such connecting device shall meet the safety standards for towbar failure or disconnection in the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted pursuant to section 75-363 and shall have displayed at approximately the halfway point between the towing vehicle and the towed vehicle on the connecting mechanism a red flag or other signal or cloth not less than twelve inches both in length and width that shall be at least five feet and not more than ten feet from the level of the paving and shall be displayed along the outside line on both sides of the towing and towed vehicles. Whenever such connection consists of a chain, rope, or cable, there shall be displayed upon such connection a red flag or other signal or cloth not less than twelve inches both in length and width.

Source: Laws 1931, c. 110, § 37, p. 317; C.S.Supp.,1941, § 39-1168; R.S.1943, § 39-772; Laws 1980, LB 785, § 1; R.S.1943, (1988), § 39-6,132; Laws 1993, LB 370, § 380; Laws 2006, LB 1007, § 11.

(y) SIZE, WEIGHT, AND LOAD

60-6,288 Vehicles; width limit; exceptions; conditions; Director-State Engineer; powers.

(1) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be permitted on any portion of the National System of Interstate and Defense Highways. The Director-State Engineer shall adopt and promulgate rules and regulations, consistent with federal requirements, designating safety devices which shall be excluded in determining vehicle width.

(2) No vehicle which exceeds a total outside width of one hundred two inches, including any load but excluding designated safety devices, shall be

permitted on any highway which is not a portion of the National System of Interstate and Defense Highways, except that such prohibition shall not apply to:

(a) Farm equipment in temporary movement, during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with, in the normal course of farm operations;

(b) Combines eighteen feet or less in width, while in the normal course of farm operations and while being driven during daylight hours or during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(c) Combines in excess of eighteen feet in width, while in the normal course of farm operations, while being driven during daylight hours for distances of twenty-five miles or less on highways and while preceded by a well-lighted pilot vehicle or flagperson, except that such combines may be driven on highways while in the normal course of farm operations for distances of twenty-five miles or less and while preceded by a well-lighted pilot vehicle or flagperson during hours of darkness when the clearance light requirements of section 60-6,235 are fully complied with;

(d) Combines and vehicles used in transporting combines or other implements of husbandry, and only when transporting combines or other implements of husbandry, to be engaged in harvesting or other agricultural work, while being transported into or through the state during daylight hours, when the total width including the width of the combine or other implement of husbandry being transported does not exceed fifteen feet, except that vehicles used in transporting combines or other implements of husbandry may, when necessary to the harvesting operation or other agricultural work, travel unloaded for distances not to exceed twenty-five miles, while the combine or other implement of husbandry to be transported is engaged in a harvesting operation or other agricultural work;

(e) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment, including portable livestock buildings not exceeding fourteen feet in width, or implements of husbandry during daylight hours;

(f) Livestock forage vehicles loaded or unloaded that comply with subsection (2) of section 60-6,305;

(g) During daylight hours only, vehicles en route to pick up, delivering, or returning unloaded from delivery of baled livestock forage which, including the load if any, may be twelve feet in width;

(h) Mobile homes or prefabricated livestock buildings not exceeding sixteen feet in width and with an outside tire width dimension not exceeding one hundred twenty inches moving during daylight hours;

(i) Self-propelled specialized mobile equipment with a fixed load when:

(i) The self-propelled specialized mobile equipment will be transported on a state highway, excluding any portion of the National System of Interstate and Defense Highways, on a city street, or on a road within the corporate limits of a city;

(ii) The city in which the self-propelled specialized mobile equipment is intended to be transported has authorized a permit pursuant to section 60-6,298 for the transportation of the self-propelled specialized mobile equipment, specifying the route to be used and the hours during which the self-

propelled specialized mobile equipment can be transported, except that no permit shall be issued by a city for travel on a state highway containing a bridge or structure which is structurally inadequate to carry the self-propelled specialized mobile equipment as determined by the Department of Roads;

(iii) The self-propelled specialized mobile equipment's gross weight does not exceed ninety-four thousand pounds if the self-propelled specialized mobile equipment has four axles or seventy-two thousand pounds if the self-propelled specialized mobile equipment has three axles; and

(iv) If the self-propelled specialized mobile equipment has four axles, the maximum weight on each set of tandem axles does not exceed forty-seven thousand pounds, or if the self-propelled specialized mobile equipment has three axles, the maximum weight on the front axle does not exceed twenty-five thousand pounds and the total maximum weight on the rear tandem axles does not exceed forty-seven thousand pounds;

(j) Vehicles which have been issued a permit pursuant to section 60-6,299; or

(k) A motor home or travel trailer, as those terms are defined in section 71-4603, which may exceed one hundred and two inches if such excess width is attributable to an appurtenance that extends no more than six inches beyond the body of the vehicle. For purposes of this subdivision, the term appurtenance includes (i) an awning and its support hardware and (ii) any appendage that is intended to be an integral part of a motor home or travel trailer and that is installed by the manufacturer or dealer. The term appurtenance does not include any item that is temporarily affixed or attached to the exterior of the motor home or travel trailer for purposes of transporting the vehicular unit from one location to another. Appurtenances shall not be considered in calculating the gross trailer area as defined in section 71-4603.

(3) The Director-State Engineer, with respect to highways under his or her jurisdiction, may designate certain highways upon which vehicles of no more than ninety-six inches in width may be permitted to travel. Highways so designated shall be limited to one or more of the following:

(a) Highways with traffic lanes of ten feet or less;

(b) Highways upon which are located narrow bridges; and

(c) Highways which because of sight distance, surfacing, unusual curves, topographic conditions, or other unusual circumstances would not in the opinion of the Director-State Engineer safely accommodate vehicles of more than ninety-six inches in width.

Source: Laws 1933, c. 105, § 1, p. 425; C.S.Supp.,1941, § 39-1032; R.S.1943, § 39-719; Laws 1957, c. 156, § 1, p. 563; Laws 1961, c. 182, § 1, p. 544; Laws 1963, c. 219, § 1, p. 691; Laws 1963, c. 221, § 1, p. 697; Laws 1963, c. 220, § 1, p. 693; Laws 1965, c. 212, § 1, p. 621; Laws 1969, c. 308, § 2, p. 1101; Laws 1973, LB 491, § 1; R.S.Supp.,1973, § 39-719; Laws 1974, LB 593, § 1; Laws 1975, LB 306, § 1; Laws 1977, LB 427, § 2; Laws 1978, LB 576, § 1; Laws 1978, LB 750, § 2; Laws 1980, LB 284, § 1; Laws 1981, LB 285, § 2; Laws 1982, LB 417, § 1; Laws 1983, LB 244, § 1; Laws 1985, LB 553, § 3; Laws 1990, LB 369, § 3; R.S.Supp.,1992, § 39-6,177; Laws 1993, LB 370, § 384; Laws 1993, LB 413, § 1; Laws 1993, LB 575, § 35; Laws 1997, LB

226, § 1; Laws 1999, LB 704, § 47; Laws 2000, LB 1361, § 5; Laws 2001, LB 376, § 3; Laws 2008, LB756, § 23.
Operative date July 18, 2008.

Cross References

Weighing stations, see sections 60-1301 to 60-1309.

60-6,289 Vehicles; height; limit; height of structure; damages.

(1) No vehicle unladen or with load shall exceed a height of fourteen feet, six inches, except:

(a) Combines or vehicles used in transporting combines, to be engaged in harvesting within or without the state, moving into or through the state during daylight hours when the overall height does not exceed fifteen feet, six inches;

(b) Livestock forage vehicles with or without load that comply with subsection (2) of section 60-6,305;

(c) Farm equipment or implements of husbandry being driven, picked up, or delivered during daylight hours by farm equipment dealers shall not exceed fifteen feet, six inches;

(d) Self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(e) Vehicles which have been issued a permit pursuant to section 60-6,299.

(2) No person shall be required to raise, alter, construct, or reconstruct any underpass, bridge, wire, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. The owners, lessees, and operators, jointly and severally, of vehicles exceeding twelve feet, six inches, in height shall assume the risk of loss to the vehicle or its load and shall be liable for any damages that result to overhead obstructions from operation of a vehicle exceeding twelve feet, six inches, in height.

Source: Laws 1933, c. 105, § 2, p. 425; C.S.Supp.,1941, § 39-1033; Laws 1943, c. 133, § 1, p. 446; R.S.1943, § 39-720; Laws 1951, c. 117, § 1, p. 526; Laws 1957, c. 156, § 2, p. 563; Laws 1969, c. 308, § 3, p. 1102; Laws 1973, LB 491, § 2; R.S.Supp.,1973, § 39-720; Laws 1974, LB 593, § 2; Laws 1977, LB 211, § 3; Laws 1978, LB 750, § 3; Laws 1980, LB 284, § 2; Laws 1985, LB 553, § 4; R.S.1943, (1988), § 39-6,178; Laws 1993, LB 370, § 385; Laws 2000, LB 1361, § 6; Laws 2008, LB756, § 24.
Operative date July 18, 2008.

60-6,290 Vehicles; length; limit; exceptions.

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation; and

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of

Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the

property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

Source: Laws 1933, c. 105, § 3, p. 425; Laws 1933, c. 102, § 1, p. 414; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 222, § 1, p. 699; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp.,1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 785, § 2; Laws 1980, LB 284, § 3; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25.
Operative date July 18, 2008.

60-6,294 Vehicles; weight limit; further restrictions by department, when authorized; axle load; load limit on bridges; overloading; liability.

(1) Every vehicle, whether operated singly or in a combination of vehicles, and every combination of vehicles shall comply with subsections (2) and (3) of this section except as provided in sections 60-6,294.01 and 60-6,297. The limitations imposed by this section shall be supplemental to all other provisions imposing limitations upon the size and weight of vehicles.

(2) No wheel of a vehicle or trailer equipped with pneumatic or solid rubber tires shall carry a gross load in excess of ten thousand pounds on any highway nor shall any axle carry a gross load in excess of twenty thousand pounds on any highway. An axle load shall be defined as the total load transmitted to the highway by all wheels the centers of which may be included between two parallel transverse vertical planes forty inches apart extending across the full width of the vehicle.

(3) No group of two or more consecutive axles shall carry a load in pounds in excess of the value given in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot, except that the maximum load carried on any group of two or more axles shall not exceed eighty thousand pounds on the National System of Interstate and Defense Highways unless the Director-State Engineer pursuant to section 60-6,295 authorizes a greater weight.

Distance in feet between the extremes of any group of two or more consecutive axles	Maximum load in pounds carried on any group of two or more consecutive axles					
	Two Axles	Three Axles	Four Axles	Five Axles	Six Axles	Seven Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000					
8	34,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,000	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,000	54,500	60,000		
20		51,000	55,500	60,500		
21		51,500	56,000	61,000		
22		52,500	56,500	61,500		
23		53,000	57,500	62,500		
24		54,000	58,000	63,000		
25		54,500	58,500	63,500	69,000	
26		55,500	59,500	64,000	69,500	
27		56,000	60,000	65,000	70,000	
28		57,000	60,500	65,500	71,000	
29		57,500	61,500	66,000	71,500	
30		58,500	62,000	66,500	72,000	
31		59,000	62,500	67,500	72,500	
32		60,000	63,500	68,000	73,000	
33			64,000	68,500	74,000	
34			64,500	69,000	74,500	
35			65,500	70,000	75,000	
36			66,000	70,500	75,500	
37			66,500	71,000	76,000	81,500
38			67,500	72,000	77,000	82,000
39			68,000	72,500	77,500	82,500
40			68,500	73,000	78,000	83,500
41			69,500	73,500	78,500	84,000
42			70,000	74,000	79,000	84,500
43			70,500	75,000	80,000	85,000
44			71,500	75,500	80,500	85,500
45			72,000	76,000	81,000	86,000
46			72,500	76,500	81,500	87,000
47			73,500	77,500	82,000	87,500
48			74,000	78,000	83,000	88,000
49			74,500	78,500	83,500	88,500
50			75,500	79,000	84,000	89,000
51			76,000	80,000	84,500	89,500

52	76,500	80,500	85,000	90,500
53	77,500	81,000	86,000	91,000
54	78,000	81,500	86,500	91,500
55	78,500	82,500	87,000	92,000
56	79,500	83,000	87,500	92,500
57	80,000	83,500	88,000	93,000
58		84,000	89,000	94,000
59		85,000	89,500	94,500
60		85,500	90,000	95,000

(4) The distance between axles shall be measured to the nearest foot. When a fraction is exactly one-half foot, the next larger whole number shall be used, except that:

(a) Any group of three axles shall be restricted to a maximum load of thirty-four thousand pounds unless the distance between the extremes of the first and third axles is at least ninety-six inches in fact; and

(b) The maximum gross load on any group of two axles, the distance between the extremes of which is more than eight feet but less than eight feet six inches, shall be thirty-eight thousand pounds.

(5) The limitations of subsections (2) through (4) of this section shall apply as stated to all main, rural, and intercity highways but shall not be construed as inhibiting heavier axle loads in metropolitan areas, except on the National System of Interstate and Defense Highways, if such loads are not prohibited by city ordinance.

(6) The weight limitations of wheel and axle loads as defined in subsections (2) through (4) of this section shall be restricted to the extent deemed necessary by the Department of Roads for a reasonable period when road subgrades or pavements are weak or are materially weakened by climatic conditions.

(7) Two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each when the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six, thirty-seven, or thirty-eight feet except as provided in section 60-6,297. Such vehicles shall be subject to section 60-6,301.

(8) If any vehicle crosses a bridge with a total gross load in excess of the posted capacity of such bridge and as a result of such crossing any damage results to the bridge, the owner of such vehicle shall be responsible for all of such damage.

(9) Vehicles equipped with a greater number of axles than provided in the tables in subsection (3) of this section shall be legal if they do not exceed the maximum load upon any wheel or axle, the maximum load upon any group of two or more consecutive axles, and the total gross weight, or any of such weights as provided in subsections (2) and (3) of this section.

(10) Subsections (1) through (9) of this section shall not apply to a vehicle which has been issued a permit pursuant to section 60-6,299, self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met, or an emergency vehicle when the requirements of subdivision (1)(a)(v) of section 60-6,298 are met.

(11) Any two consecutive axles the centers of which are more than forty inches and not more than ninety-six inches apart, measured to the nearest inch between any two adjacent axles in the series, shall be defined as tandem axles,

and the gross weight transmitted to the road surface through such series shall not exceed thirty-four thousand pounds. No axle of the series shall exceed the maximum weight permitted under this section for a single axle.

(12) Dummy axles shall be disregarded in determining the lawful weight of a vehicle or vehicle combination for operation on the highway. Dummy axle shall mean an axle attached to a vehicle or vehicle combination in a manner so that it does not articulate or substantially equalize the load and does not carry at least the lesser of eight thousand pounds or eight percent of the gross weight of the vehicle or vehicle combination.

(13) The maximum gross weight limit and the axle weight limit for any vehicle or combination of vehicles equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided in 23 U.S.C. 127(a)(12), as such section existed on July 18, 2008. The additional amount of weight allowed by this subsection shall not exceed four hundred pounds and shall not be construed to be in addition to the five-percent-in-excess-of-maximum-load provision of subdivision (1) of section 60-6,301.

Source: Laws 1933, c. 105, § 4, p. 426; Laws 1939, c. 50, § 2, p. 218; C.S.Supp.,1941, § 39-1035; Laws 1943, c. 133, § 2, p. 446; R.S. 1943, § 39-722; Laws 1945, c. 91, § 1, p. 312; Laws 1947, c. 147, § 1, p. 403; Laws 1953, c. 134, § 1, p. 416; Laws 1953, c. 131, § 9, p. 404; Laws 1959, c. 164, § 2, p. 600; Laws 1969, c. 318, § 1, p. 1150; C.S.Supp.,1972, § 39-722; Laws 1980, LB 284, § 4; Laws 1982, LB 383, § 2; Laws 1984, LB 726, § 1; Laws 1985, LB 553, § 6; Laws 1987, LB 132, § 1; Laws 1990, LB 369, § 4; R.S.Supp.,1992, § 39-6,180; Laws 1993, LB 370, § 390; Laws 1995, LB 186, § 1; Laws 1996, LB 1104, § 4; Laws 2000, LB 1361, § 8; Laws 2005, LB 82, § 3; Laws 2008, LB756, § 26. Operative date July 18, 2008.

Cross References

Special load restrictions, rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.
Weighing stations, see sections 60-1301 to 60-1309.

60-6,297 Disabled vehicles; length and load limitations; exception.

The provisions of subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply when a disabled combination of vehicles is towed if the combination of vehicles, together with the wrecker or tow truck, does not exceed one hundred fifty feet, inclusive of front and rear bumpers including load. Such exception shall apply only if the disabled combination of vehicles is being towed directly to the nearest place of secure safekeeping. The towing vehicle shall be connected with the air brakes and brake lights of the towed vehicle. For purposes of this section, place of secure safekeeping means a place off the traveled portion of the highway that can accommodate the parking of such vehicles in order for the vehicles to be (1) repaired or (2) dismantled and operated in compliance with subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4.

60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, up to ten percent greater than the maximum length specified by law, except that for a truck-tractor semitrailer trailer combination utilized to transport sugar beets which may be up to twenty-five percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on a tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced

in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars for a thirty-day permit and fifty dollars for a sixty-day permit. Permits issued pursuant to such subdivision shall be valid for thirty days or sixty days and shall be renewable for a total number of days not to exceed one hundred and twenty days per year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 370, § 394; Laws 1993, LB 176, § 1; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246.

Cross References

Rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

60-6,301 Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.

When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the maximum

gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle, only one tandem axle, or only one group of axles when the distance between the first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Roads or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement

officer has reason to believe that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

Source: Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp.,1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws 1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB148, § 1.

60-6,304 Load; contents; requirements; violation; penalty.

(1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(2) No person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(3) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(4) Any person who violates any provision of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1.

(bb) SPECIAL RULES FOR MOPEDS

60-6,309 Moped; statutes; applicable.

Mopeds, their owners, and their operators shall be subject to the Motor Vehicle Operator's License Act, but shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1979, LB 23, § 3; Laws 1986, LB 731, § 2; R.S.1943, (1988), § 39-6,196; Laws 1993, LB 370, § 405; Laws 2005, LB 274, § 247; Laws 2005, LB 276, § 104.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

60-6,310 Moped; operation; license required.

No person shall operate a moped upon a highway unless such person has a valid operator's license.

Source: Laws 1979, LB 23, § 4; R.S.1943, (1988), § 39-6,197; Laws 1993, LB 370, § 406; Laws 2008, LB756, § 27.
Operative date March 20, 2008.

(dd) SPECIAL RULES FOR SNOWMOBILES

60-6,320 Snowmobiles; operate, defined.

For purposes of sections 60-6,320 to 60-6,346, operate means to ride in or on and control the operation of a snowmobile.

Source: Laws 1971, LB 330, § 1; Laws 1972, LB 1149, § 1; R.S.1943, (1988), § 60-2001; Laws 1993, LB 370, § 416; Laws 1993, LB 121, § 392; Laws 2005, LB 274, § 248.

60-6,321 Repealed. Laws 2005, LB 274, § 286.

60-6,322 Repealed. Laws 2005, LB 274, § 286.

60-6,323 Repealed. Laws 2005, LB 274, § 286.

60-6,324 Repealed. Laws 2005, LB 274, § 286.

60-6,325 Repealed. Laws 2005, LB 274, § 286.

60-6,326 Repealed. Laws 2005, LB 274, § 286.

60-6,327 Repealed. Laws 2005, LB 274, § 286.

60-6,328 Repealed. Laws 2005, LB 274, § 286.

60-6,329 Repealed. Laws 2005, LB 274, § 286.

60-6,330 Repealed. Laws 2005, LB 274, § 286.

60-6,331 Repealed. Laws 2005, LB 274, § 286.

60-6,332 Repealed. Laws 2005, LB 274, § 286.

60-6,333 Repealed. Laws 2005, LB 274, § 286.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,347 Minibikes; exemptions from certain requirements.

Minibikes, their owners, and their operators shall be exempt from the requirements of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 1972, LB 1196, § 5; Laws 1981, LB 285, § 8; Laws 1986, LB 731, § 3; Laws 1989, LB 285, § 132; R.S.Supp.,1992, § 60-2101.01; Laws 1993, LB 370, § 443; Laws 2004, LB 812, § 1; Laws 2005, LB 274, § 249.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355 All-terrain vehicle, defined.

For purposes of sections 60-6,355 to 60-6,362, all-terrain vehicle shall mean any motorized off-highway vehicle which (1) is fifty inches or less in width, (2) has a dry weight of nine hundred pounds or less, (3) travels on three or more low-pressure tires, (4) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (5) has a seat or saddle designed to be straddled by the operator, and (6) has handlebars or any other steering assembly for steering control.

All-terrain vehicles which have been modified to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be required to be registered under the Motor Vehicle Registration Act.

Source: Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-6,356 All-terrain vehicle; operation; restrictions; city or village ordinance; county board resolution.

(1) An all-terrain vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle while operating the all-terrain vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a

request. When operating an all-terrain vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) Subject to subsection (1) of this section, the crossing of a highway shall be permitted by an all-terrain vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles within the corporate limits of the city or village if the operation is in accordance with subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles within the unincorporated village.

Source: Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp.,1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1.

(gg) SMOKE EMISSIONS AND NOISE

60-6,364 Applicability of sections.

Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;

(3) Vehicles used for research and development which have been approved by the Director of Environmental Quality;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the director; and

(7) Other vehicles expressly exempted by the director.

Source: Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(hh) SPECIAL RULES FOR ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

60-6,375 Electric personal assistive mobility device; exemptions from certain requirements.

An electric personal assistive mobility device, its owner, and its operator shall be exempt from the requirements of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, and the Motor Vehicle Safety Responsibility Act.

Source: Laws 2002, LB 1105, § 459; Laws 2005, LB 274, § 252; Laws 2005, LB 276, § 105.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.
Motor Vehicle Safety Responsibility Act, see section 60-569.

ARTICLE 13
WEIGHING STATIONS

Section
60-1301. Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.
60-1303. Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.
60-1306. Carrier enforcement officers; powers; funding of firearms.
60-1307. Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.

60-1301 Weighing stations; portable scales; purpose; location; effect as evidence of weight determination; reweighing, when required; pickup trucks; exception; Nebraska State Patrol; rules and regulations.

In order to promote public safety, to preserve and protect the state highways and bridges and prevent immoderate and destructive use of the same, and to

enforce the motor vehicle registration laws, the Department of Roads shall have the responsibility to construct, maintain, provide, and contract with the Nebraska State Patrol for the operation of weighing stations and provide the funding for the same. The Nebraska State Patrol shall operate the weighing stations, including portable scales, for the weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. Each of the weighing stations shall be located near, on, or adjacent to a state highway upon real estate owned by the State of Nebraska or upon real estate acquired for that purpose. Weights determined on such weighing stations and portable scales shall be presumed to be accurate and shall be accepted in court as prima facie evidence of a violation of the laws relating to the size, weight, load, and registration of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles. The owner or driver of a vehicle found to be in violation of such laws by the use of portable scales shall be advised by the officer operating the portable scale that he or she has the right to demand an immediate reweighing at his or her expense at the nearest permanent state-approved scale capable of weighing the vehicle, and if a variance exists between the weights of the permanent and portable scales, then the weights determined on the permanent scale shall prevail. Sections 60-1301 to 60-1309 shall not apply to pickup trucks with a factory-rated capacity of one ton or less, except as may be provided by rules and regulations of the Nebraska State Patrol, or to recreational vehicles as defined in section 71-4603. The Nebraska State Patrol may adopt and promulgate rules and regulations concerning the weighing of pickup trucks with a factory-rated capacity of one ton or less which tow vehicles. Such rules and regulations shall require trucks towing vehicles to comply with sections 60-1301 to 60-1309 when it is necessary to promote the public safety and preserve and protect the state highways and bridges.

Source: Laws 1949, c. 109, § 1, p. 300; Laws 1951, c. 116, § 1, p. 525; R.R.S.1943, § 39-603.03; Laws 1955, c. 145, § 1, p. 406; Laws 1961, c. 323, § 1, p. 1027; Laws 1963, c. 373, § 5, p. 1197; Laws 1976, LB 823, § 2; Laws 1985, LB 395, § 4; Laws 2002, LB 470, § 1; Laws 2008, LB797, § 2.
Operative date April 1, 2008.

60-1303 Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.

(1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2)(a) On and after July 20, 2002, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before July 20, 2002, and not authorized to act under subdivisions (1) through (8) of section 81-2005 shall be known as carrier enforcement officers.

(3) All carrier enforcement officers shall be bonded or insured as required by section 11-201. Premiums shall be paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on July 20, 2002, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Roads shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified in sections 60-1301 to 60-1309. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Roads may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

Source: Laws 1955, c. 145, § 3, p. 406; Laws 1978, LB 653, § 21; Laws 1985, LB 395, § 5; Laws 1991, LB 627, § 7; Laws 1994, LB 1066, § 47; Laws 1996, LB 1218, § 15; Laws 2002, LB 470, § 2; Laws 2003, LB 408, § 2; Laws 2004, LB 884, § 32; Laws 2004, LB 983, § 2; Laws 2005, LB 274, § 253; Laws 2007, LB322, § 10.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

60-1306 Carrier enforcement officers; powers; funding of firearms.

The carrier enforcement officers shall have the power (1) of peace officers solely for the purpose of enforcing the International Fuel Tax Agreement Act and the provisions of law relating to the size, weight, and load and the Motor Vehicle Registration Act pertaining to buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles, (2) when in uniform, to require the driver thereof to stop and exhibit his or her operator's license and registration issued for the vehicle and submit to an inspection of such vehicle, the license plates, the registration thereon, and licenses and permits required under the motor fuel laws, (3) to make arrests upon view and without warrant for any violation committed in their presence of the provisions of the Motor Vehicle Operator's License Act or of any other law regulating the operation of vehicles or the use of the highways while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, (4) to make arrests upon view and without warrant for any violation committed in their presence which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07, and (5) to make arrests on warrant for any violation which is a misdemeanor or felony under the laws of this state while in the performance of their duties referred to in subdivisions (1) and (2) of this section and of sections 60-1308, 60-1309, and 75-362 to 75-369.07.

Any funds used to arm carrier enforcement officers shall be paid solely from the Carrier Enforcement Cash Fund. The amount of funds shall be determined by the Superintendent of Law Enforcement and Public Safety.

Source: Laws 1955, c. 145, § 6, p. 407; Laws 1963, c. 373, § 6, p. 1197; Laws 1983, LB 412, § 2; Laws 1985, LB 395, § 7; Laws 1986, LB 783, § 3; Laws 1991, LB 627, § 8; Laws 1994, LB 28, § 1; Laws 1996, LB 1218, § 16; Laws 2002, LB 499, § 4; Laws 2003, LB 480, § 1; Laws 2004, LB 983, § 3; Laws 2005, LB 274, § 254; Laws 2006, LB 1007, § 12.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.
Motor Vehicle Operator's License Act, see section 60-462.
Motor Vehicle Registration Act, see section 60-301.

60-1307 Size, weight, load, and registration violations; summons; hearing; promise to appear; violation; penalty; nonresidents, personal appearance required; motor vehicle; seizure and detention; when; release.

(1) Whenever any person is arrested at one of the state weighing stations or portable scales for a violation of the laws relating to the trip permit provided in section 66-1418, the Motor Vehicle Registration Act, or the laws relating to the size, weight, and load of buses, trucks, truck-tractors, semitrailers, trailers, or towed vehicles, the arresting officer shall take the name and address of such person and the license number of his or her motor vehicle and issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice, such time to be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he or she desires, have a right to an immediate hearing or a hearing within twenty-four hours at a convenient hour. The hearing shall be before a magistrate within the county in which the offense was committed. Such officer

shall, upon such person giving a written promise to appear at such time and place, release him or her from custody. Such person arrested and released shall not be permitted to operate the motor vehicle concerned until it is in compliance with the Motor Vehicle Registration Act and section 60-6,301. Any person refusing to give such written promise to appear shall be immediately taken by the arresting officer before the nearest or most accessible magistrate. Any person who willfully violates a written promise to appear given in accordance with this section shall be guilty of a Class III misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested.

(2) Subsection (1) of this section shall not apply to any person not a resident of the State of Nebraska. The arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

(3)(a) The arresting officer shall seize and detain the motor vehicle concerned until the motor vehicle is in compliance with section 60-6,294 or in conformity with the exceptions permitted by section 60-6,301, and unless all the violations pending before the magistrate relating to section 60-6,294 have been the subject of a conviction, acquittal, or dismissal and all related fines and costs have been paid, the arresting officer may detain the motor vehicle concerned when the officer has reasonable grounds to believe that (i) the accused will refuse to respond to the citation, (ii) the accused has no ties to the jurisdiction reasonably sufficient to assure his or her appearance in court, or (iii) the accused has previously failed to appear in response to a citation.

(b) If a motor vehicle detained pursuant to this section is transporting livestock, procedures and precautions shall be taken if necessary to ensure the health and welfare of such livestock while the motor vehicle is detained.

(c) A motor vehicle detained pursuant to this subsection shall be released upon execution of a bond with such surety or sureties as the court deems proper or, in lieu of such surety or sureties and at the option of the accused, a cash deposit, conditioned upon his or her appearance before the proper court to answer the offense for which he or she may be charged and to appear at such times thereafter as the court so orders. Such bond shall be in an amount as set forth in the schedule adopted pursuant to section 29-901.05 and shall be administered, subject to review and forfeiture, in the same manner as bail bonds, except that for violations of section 60-6,294, such bond or cash deposit shall be in an amount not less than the sum of costs together with the appropriate fine prescribed in section 60-6,296.

(d) In addition to the operator, any owner or lessee of the motor vehicle may execute the bond or make the cash deposit required by this section. Upon execution of the bond or cash deposit, the arresting or custodial officer shall release the motor vehicle and cargo to the person who executed the bond or deposited the cash or to the designee of such person.

(e) Towing and storage charges, if any, shall be paid by the person to whom the motor vehicle is released prior to the release of the motor vehicle. Such charges shall be assessed as costs in any action for the forfeiture of the recognizance.

(4) Nothing in this section shall (a) prevent the owner or the owner's representative of such motor vehicle or the cargo on the motor vehicle from taking possession of the cargo and transferring it to another vehicle or taking possession of the cargo and the trailer, if the trailer can be separated from the

power unit, or (b) create any liability for the state arising out of damage to such motor vehicle and its cargo.

Source: Laws 1955, c. 145, § 7, p. 407; Laws 1957, c. 279, § 1, p. 1010; Laws 1963, c. 373, § 7, p. 1198; Laws 1977, LB 39, § 90; Laws 1985, LB 395, § 8; Laws 1986, LB 783, § 4; Laws 1987, LB 307, § 1; Laws 1993, LB 370, § 471; Laws 2004, LB 983, § 4; Laws 2005, LB 274, § 255.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 14
MOTOR VEHICLE INDUSTRY LICENSING

Section
60-1401.02. Terms, defined.
60-1411.01. Administration and enforcement expenses; how paid; fees; licenses; expiration.
60-1411.02. Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.
60-1417. Vehicle sale; instrument in writing; contents; copy of instruments and odometer statements retained by dealer; out-of-state sale; requirements.
60-1419. Dealer's licenses; bond; conditions.

60-1401.02 Terms, defined.

For purposes of sections 60-1401.01 to 60-1440 and 60-2601 to 60-2607, unless the context otherwise requires:

(1) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(2) Association means any two or more persons acting with a common purpose, regardless of the relative degrees of involvement, and includes, but is not limited to, the following persons so acting:

(a) A person and one or more of his or her family members. For purposes of this subdivision, family member means an individual related to the person by blood, marriage, adoption, or legal guardianship as the person's spouse, child, parent, brother, sister, grandchild, grandparent, ward, or legal guardian or any individual so related to the person's spouse; and

(b) Two or more persons living in the same dwelling unit, whether or not related to each other;

(3) Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement;

(4) Trailer dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used trailers and manufactured homes;

(5) Wrecker or salvage dealer means any person who acquires one or more motor vehicles or trailers for the purpose of dismantling them for the purpose of reselling the parts or reselling the vehicles as scrap;

(6) Motor vehicle means any vehicle for which evidence of title is required as a condition precedent to registration under the laws of this state but does not include trailers;

(7) Used motor vehicle means every motor vehicle which has been sold, bargained, exchanged, or given away or for which title has been transferred from the person who first acquired it from the manufacturer, importer, dealer, or agent of the manufacturer or importer. A new motor vehicle is not considered a used motor vehicle until it has been placed in use by a bona fide consumer, notwithstanding the number of transfers of the motor vehicle;

(8) New motor vehicle means all motor vehicles which are not included within the definition of a used motor vehicle in this section;

(9) Trailer means semitrailers and trailers as defined in sections 60-348 and 60-354, respectively, which are required to be licensed as commercial trailers, other vehicles without motive power constructed so as to permit their being used as conveyances upon the public streets and highways and so constructed as not to be attached to real estate and to permit the vehicle to be used for human habitation by one or more persons, and camping trailers, slide-in campers, fold-down campers, and fold-down tent trailers. Machinery and equipment to which wheels are attached and designed for being towed by a motor vehicle are excluded from the provisions of sections 60-1401.01 to 60-1440;

(10) Motorcycle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the business of selling or exchanging new or used motorcycles;

(11) Motorcycle means every motor vehicle, except a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground and for which evidence of title is required as a condition precedent to registration under the laws of this state;

(12) Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-3,198, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to sections 60-1401.01 to 60-1440;

(13) Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers;

(14) Supplemental motor vehicle, trailer, motorcycle, or motor vehicle auction dealer means any person holding either a motor vehicle, trailer, motorcycle, or motor vehicle auction dealer's license engaging in the business authorized by such license at a place of business that is more than three hundred feet from any part of the place of business designated in the dealer's original license but which is located within the city or county described in such original license;

(15) Motor vehicle, motorcycle, or trailer salesperson means any person who, for a salary, commission, or compensation of any kind, is employed directly by only one specified licensed Nebraska motor vehicle dealer, motorcycle dealer,

or trailer dealer, except when the salesperson is working for two or more dealerships with common ownership, to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles, motorcycles, or trailers. A person owning any part of more than one dealership may be a salesperson for each of such dealerships. For purposes of this section, common ownership means that there is at least an eighty percent interest in each dealership by one or more persons having ownership in such dealership;

(16) Manufacturer means any person, resident or nonresident of this state, who is engaged in the business of distributing, manufacturing, or assembling new motor vehicles, trailers, or motorcycles and also has the same meaning as the term franchisor as used in sections 60-1401.01 to 60-1440;

(17) Factory representative means a representative employed by a person who manufactures or assembles motor vehicles, motorcycles, or trailers, or by a factory branch, for the purpose of promoting the sale of its motor vehicles, motorcycles, or trailers to, or for supervising or contacting, its dealers or prospective dealers in this state;

(18) Distributor means a person, resident or nonresident of this state, who in whole or in part sells or distributes new motor vehicles, trailers, or motorcycles to dealers or who maintains distributors or representatives who sell or distribute motor vehicles, trailers, or motorcycles to dealers and also has the same meaning as the term franchisor as used in sections 60-1401.01 to 60-1440;

(19) Finance company means any person engaged in the business of financing sales of motor vehicles, motorcycles, or trailers, or purchasing or acquiring promissory notes, secured instruments, or other documents by which the motor vehicles, motorcycles, or trailers are pledged as security for payment of obligations arising from such sales and who may find it necessary to engage in the activity of repossession and the sale of the motor vehicles, motorcycles, or trailers so pledged;

(20) Franchise means a contract between two or more persons when all of the following conditions are included:

(a) A commercial relationship of definite duration or continuing indefinite duration is involved;

(b) The franchisee is granted the right to offer and sell motor vehicles manufactured or distributed by the franchisor;

(c) The franchisee, as an independent business, constitutes a component of the franchisor's distribution system;

(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising, or other commercial symbol designating the franchisor; and

(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of motor vehicles, parts, and accessories;

(21) Franchisee means a new motor vehicle dealer who receives motor vehicles from the franchisor under a franchise and who offers and sells such motor vehicles to the general public;

(22) Franchisor means a person who manufactures or distributes motor vehicles and who may enter into a franchise;

(23) Community means a franchisee's area of responsibility as stipulated in the franchise;

(24) Line-make means the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor or manufacturer of the motor vehicle;

(25) Consumer care means the performance, for the public, of necessary maintenance and repairs to motor vehicles;

(26) Sale, selling, and equivalent expressions mean the attempted act or acts either as principal, agent, or salesperson or in any capacity whatsoever of selling, bartering, exchanging, or otherwise disposing of or negotiating or offering or attempting to negotiate the sale, purchase, or exchange of or interest in any motor vehicle, trailer, or motorcycle, including the leasing of any motor vehicle, trailer, or motorcycle for a period of thirty or more days with a right or option to purchase under the terms of the lease;

(27) Established place of business means a permanent location within this state, easily accessible to the public, owned or leased by the applicant or a licensee for at least the term of the license year, and conforming with applicable zoning laws, at which the licensee conducts the business for which he or she is licensed and may be contacted by the public during posted reasonable business hours which shall be not less than forty hours per week. The established place of business shall have the following facilities: (a) Office space in a building or mobile home, which space shall be clean, dry, safe, and well lighted and in which shall be kept and maintained all books, records, and files necessary for the conduct of the licensed business, which premises, books, records, and files shall be available for inspection during regular business hours by any peace officer or investigator employed or designated by the board. Dealers shall, upon demand of the board's investigator, furnish copies of records so required when conducting any investigation of a complaint; (b) a sound and well-maintained sign which is legible from a public road and displayed with letters not less than eight inches in height and one contiguous area to display ten or more motor vehicles, motorcycles, or trailers in a presentable manner; (c) adequate repair facilities and tools to properly and actually service warranties on motor vehicles, motorcycles, or trailers sold at such place of business and to make other repairs arising out of the conduct of the licensee's business or, in lieu of such repair facilities, the licensee may enter into a contract for the provision of such service and file a copy thereof annually with the board and shall furnish to each buyer a written statement as to where such service will be provided as required by section 60-1417. The service facility shall be located in the same county as the licensee unless the board specifically authorizes the facility to be located elsewhere. Such facility shall maintain regular business hours and shall have suitable repair equipment and facilities to service and inspect the type of vehicles sold by the licensee. Investigators of the board may certify ongoing compliance with the service and inspection facilities or repair facilities; and (d) an operating telephone connected with a public telephone exchange and located on the premises of the established place of business with a telephone number listed by the public telephone exchange and available to the public during the required posted business hours. A mobile truck equipped with repair facilities to properly perform warranty functions and other repairs shall be deemed adequate repair facilities for trailers. The requirements of this subdivision shall apply to the place of business authorized under a supplemental motor vehicle, motorcycle, or trailer dealer's license;

(28) Retail, when used to describe a sale, means a sale to any person other than a licensed dealer of any kind within the definitions of this section;

(29) Factory branch means a branch office maintained in this state by a person who manufactures, assembles, or distributes motor vehicles, motorcycles, or trailers for the sale of such motor vehicles, motorcycles, or trailers to distributors or dealers or for directing or supervising, in whole or in part, its representatives in this state;

(30) Distributor representative means a representative employed by a distributor or distributor branch for the same purpose as set forth in the definition of factory representative in this section;

(31) Board means the Nebraska Motor Vehicle Industry Licensing Board;

(32) Scrap metal processor means any person engaged in the business of buying vehicles, motorcycles, or parts thereof for the purpose of remelting or processing into scrap metal or who otherwise processes ferrous or nonferrous metallic scrap for resale. No scrap metal processor shall sell vehicles or motorcycles without obtaining a wrecker or salvage dealer license;

(33) Designated family member means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will, who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of such dealership, has been appointed by a court as the legal representative of the new motor vehicle dealer's property;

(34) Bona fide consumer means an owner of a motor vehicle, motorcycle, or trailer who has acquired such vehicle for use in business or for pleasure purposes, who has been granted a certificate of title on such motor vehicle, motorcycle, or trailer, and who has registered such motor vehicle, motorcycle, or trailer, all in accordance with the laws of the residence of the owner, except that no owner who sells more than eight registered motor vehicles, motorcycles, or trailers within a twelve-month period shall qualify as a bona fide consumer;

(35) Violator means a person acting without a license or registration as required by sections 60-1401.01 to 60-1440;

(36) 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.; and

(37) Dealer's agent means a person who acts as a buying agent for one or more motor vehicle dealers, motorcycle dealers, or trailer dealers.

Nothing in sections 60-1401.01 to 60-1440 shall apply to the State of Nebraska or any of its agencies or subdivisions. No insurance company, finance company, public utility company, fleet owner, or other person coming into possession of any motor vehicle, motorcycle, or trailer, as an incident to its regular business, who sells or exchanges the motor vehicle, motorcycle, or trailer shall be considered a dealer except persons whose regular business is leasing or renting motor vehicles, motorcycles, or trailers.

Source: Laws 1971, LB 768, § 2; Laws 1972, LB 1335, § 1; Laws 1974, LB 754, § 1; Laws 1978, LB 248, § 3; Laws 1983, LB 234, § 18; Laws 1984, LB 825, § 12; Laws 1989, LB 280, § 1; Laws 1993, LB 121, § 388; Laws 1993, LB 200, § 1; Laws 1995, LB 564, § 2; Laws 1996, LB 1035, § 1; Laws 1998, LB 903, § 3; Laws 2000, LB 1018, § 1; Laws 2003, LB 498, § 1; Laws 2003, LB 563, § 34; Laws 2005, LB 274, § 256; Laws 2008, LB797, § 3.
Operative date April 1, 2008.

60-1411.01 Administration and enforcement expenses; how paid; fees; licenses; expiration.

(1) Until January 1, 2008, to pay the expenses of the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440, the board shall collect with each application for each class of license fees not exceeding the following amounts:

(a) Motor vehicle dealer's license, two hundred dollars;

(b) Supplemental motor vehicle dealer's license, ten dollars;

(c) Motor vehicle or motorcycle salesperson's license, ten dollars;

(d) Dealer's agent license, fifty dollars;

(e) Motor vehicle, motorcycle, or trailer manufacturer's license, three hundred dollars;

(f) Distributor's license, three hundred dollars;

(g) Factory representative's license, ten dollars;

(h) Distributor representative's license, ten dollars;

(i) Finance company's license, two hundred dollars;

(j) Wrecker or salvage dealer's license, one hundred dollars;

(k) Factory branch license, one hundred dollars;

(l) Motorcycle dealer's license, two hundred dollars;

(m) Motor vehicle auction dealer's license, two hundred dollars; and

(n) Trailer dealer's license, two hundred dollars.

(2) On and after January 1, 2008, to pay the expenses of the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440, the board shall collect with each application for each class of license fees not exceeding the following amounts:

(a) Motor vehicle dealer's license, four hundred dollars;

(b) Supplemental motor vehicle dealer's license, twenty dollars;

(c) Motor vehicle or motorcycle salesperson's license, twenty dollars;

(d) Dealer's agent license, one hundred dollars;

(e) Motor vehicle, motorcycle, or trailer manufacturer's license, six hundred dollars;

(f) Distributor's license, six hundred dollars;

(g) Factory representative's license, twenty dollars;

(h) Distributor representative's license, twenty dollars;

(i) Finance company's license, four hundred dollars;

(j) Wrecker or salvage dealer's license, two hundred dollars;

(k) Factory branch license, two hundred dollars;

(l) Motorcycle dealer's license, four hundred dollars;

(m) Motor vehicle auction dealer's license, four hundred dollars; and

(n) Trailer dealer's license, four hundred dollars.

(3) The fees shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440.

(4) Such licenses, if issued, shall expire on December 31 next following the date of the issuance thereof. Any motor vehicle, motorcycle, or trailer dealer changing its location shall not be required to obtain a new license if the new location is within the same city limits or county, all requirements of law are complied with, and a fee of twenty-five dollars is paid, but any change of ownership of any licensee shall require a new application for a license and a new license. Change of name of licensee without change of ownership shall require the licensee to obtain a new license and pay a fee of five dollars. Applications shall be made each year for a new or renewal license. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1971, LB 768, § 11; Laws 1972, LB 1335, § 8; Laws 1974, LB 754, § 9; Laws 1978, LB 248, § 7; Laws 1984, LB 825, § 16; Laws 1997, LB 752, § 147; Laws 1998, LB 903, § 4; Laws 1999, LB 632, § 3; Laws 2003, LB 498, § 7; Laws 2007, LB681, § 1.

60-1411.02 Investigation; denial of application; revocation or suspension of license; probation; administrative fine; grounds.

The board may, upon its own motion, and shall, upon a sworn complaint in writing of any person, investigate the actions of any person acting, registered, or licensed under Chapter 60, article 14, as a motor vehicle dealer, trailer dealer, motor vehicle or trailer salesperson, dealer's agent, manufacturer, factory branch, distributor, factory representative, distributor representative, supplemental motor vehicle dealer, wrecker or salvage dealer, finance company, motorcycle dealer, or motor vehicle auction dealer or operating without a registration or license when such registration or license is required. The board may deny any application for a license, may revoke or suspend a license, may place the licensee or registrant on probation, may assess an administrative fine in an amount not to exceed five thousand dollars per violation, or may take any combination of such actions if the violator, applicant, registrant, or licensee including any officer, stockholder, partner, or limited liability company member or any person having any financial interest in the violator, applicant, registrant, or licensee:

(1) Has had any license issued under Chapter 60, article 14, revoked or suspended and, if the license has been suspended, has not complied with the terms of suspension;

(2) Has knowingly purchased, sold, or done business in stolen motor vehicles, motorcycles, or trailers or parts therefor;

(3) Has failed to provide and maintain an established place of business;

(4) Has been found guilty of any felony which has not been pardoned, has been found guilty of any misdemeanor concerning fraud or conversion, or has suffered any judgment in any civil action involving fraud, misrepresentation, or conversion. In the event felony charges are pending against an applicant, the board may refuse to issue a license to the applicant until there has been a final determination of the charges;

(5) Has made a false material statement in his or her application or any data attached to the application or to any investigator or employee of the board;

(6) Has willfully failed to perform any written agreement with any consumer or retail buyer;

(7) Has made a fraudulent sale, transaction, or repossession, or created a fraudulent security interest as defined in the Uniform Commercial Code, in a motor vehicle, trailer, or motorcycle;

(8) Has failed to notify the board of a change in the location of his or her established place or places of business and in the case of a salesperson has failed to notify the board of any change in his or her employment;

(9) Has willfully failed to deliver to a purchaser a proper certificate of ownership for a motor vehicle, trailer, or motorcycle sold by the licensee or to refund the full purchase price if the purchaser cannot legally obtain proper certification of ownership within thirty days;

(10) Has forged the signature of the registered or legal owner on a certificate of title;

(11) Has failed to comply with Chapter 60, article 14, and any orders, rules, or regulations of the board adopted and promulgated under Chapter 60, article 14;

(12) Has failed to comply with the advertising and selling standards established in section 60-1411.03;

(13) Has failed to comply with any provisions of the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, Chapter 60, article 14, or the rules or regulations adopted and promulgated by the board pursuant to Chapter 60, article 14;

(14) Has failed to comply with any provision of Chapter 71, article 46, or with any code, standard, rule, or regulation adopted or made under the authority of or pursuant to Chapter 71, article 46;

(15) Has willfully defrauded any retail buyer or other person in the conduct of the licensee's business;

(16) Has employed any unlicensed salesperson or salespersons;

(17) Has failed to comply with sections 60-190 to 60-196;

(18) Has engaged in any unfair methods of competition or unfair or deceptive acts or practices prohibited under the Uniform Deceptive Trade Practices Act; or

(19) Has conspired, as defined in section 28-202, with other persons to process certificates of title in violation of the Motor Vehicle Certificate of Title Act.

If the violator, applicant, registrant, or licensee is a publicly held corporation, the board's authority shall extend only to the corporation and its managing officers and directors.

Source: Laws 1971, LB 768, § 12; Laws 1972, LB 1335, § 9; Laws 1974, LB 754, § 10; Laws 1978, LB 248, § 8; Laws 1980, LB 820, § 2; Laws 1984, LB 825, § 17; Laws 1991, LB 47, § 6; Laws 1993, LB 106, § 1; Laws 1993, LB 121, § 391; Laws 1993, LB 370, § 472; Laws 1994, LB 884, § 82; Laws 1995, LB 564, § 5; Laws 1999, LB 632, § 4; Laws 2003, LB 498, § 8; Laws 2005, LB 274, § 257; Laws 2005, LB 276, § 106.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
Uniform Deceptive Trade Practices Act, see section 87-306.

60-1417 Vehicle sale; instrument in writing; contents; copy of instruments and odometer statements retained by dealer; out-of-state sale; requirements.

Every motor vehicle, motorcycle, or trailer sale, except between a manufacturer or distributor, shall be evidenced by an instrument in writing upon a form that may be adopted and promulgated by the board and approved by the Attorney General which shall contain all the agreements of the parties and shall be signed by the buyer and seller or a duly acknowledged agent of the seller. Prior to or concurrent with any such motor vehicle, motorcycle, or trailer sale, the seller shall deliver to the buyer written documentation which shall contain the following information:

(1) Name of seller;

(2) Name of buyer;

(3) Year of model and identification number;

(4) Cash sale price;

(5) Year and model of trailer and serial number, if any;

(6) The amount of buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of any goods traded in;

(7) The difference between subdivisions (4) and (6) of this section;

(8) The amount included for insurance if a separate charge is made for insurance, specifying the types of coverages;

(9) If the sale is an installment sale:

(a) The basic time price, which is the sum of subdivisions (7) and (8) of this section;

(b) The time-price differential;

(c) The amount of the time-price balance, which is the sum of subdivisions (a) and (b) of this subdivision, payable in installments by the buyer to the seller;

(d) The number, amount, and due date or period of each installment payment; and

(e) The time-sales price;

(10) Whether the sale is as is or subject to warranty and, if subject to warranty, specifying the warranty; and

(11) If repairs or inspections arising out of the conduct of a dealer's business cannot be provided by the dealer in any representations or warranties that may arise, the instrument shall so state that fact and shall provide the purchaser with the location of a facility where such repairs or inspections, as provided for in the service contract, can be accomplished.

A copy of all such instruments and written documentation shall be retained in the file of the dealer for five years from the date of sale. The dealer shall keep a copy of the odometer statement required by section 60-192 which is furnished to him or her for each motor vehicle the dealer purchases or sells. The dealer shall keep such statements for five years from the date of the transaction as shown on the odometer statement.

If a transaction for the sale of a new motor vehicle which does not take place in the State of Nebraska provides for delivery in Nebraska, delivery in Nebraska shall only be made through a motor vehicle dealer licensed and bonded in Nebraska. The motor vehicle dealer may charge the seller for such service but shall not charge the purchaser. The motor vehicle dealer shall be jointly and severally liable for compliance with all applicable laws and contracts with the seller. If the dealer is not a franchisee of the manufacturer or distributor of the line-make of the vehicle, the dealer shall notify the purchaser in writing that the dealer is jointly and severally liable with the seller for compliance with all applicable laws and contracts with the seller and that the dealer is not authorized to provide repairs or inspections pursuant to the manufacturer's warranty.

Source: Laws 1945, c. 143, § 9, p. 463; Laws 1953, c. 207, § 13, p. 730; Laws 1955, c. 243, § 7, p. 767; R.R.S.1943, § 60-617; Laws 1963, c. 365, § 13, p. 1179; Laws 1967, c. 394, § 10, p. 1237; Laws 1971, LB 768, § 36; Laws 1974, LB 754, § 14; Laws 1978, LB 248, § 11; Laws 1984, LB 825, § 27; Laws 1993, LB 370, § 473; Laws 1995, LB 564, § 9; Laws 2000, LB 1018, § 6; Laws 2005, LB 276, § 107.

60-1419 Dealer's licenses; bond; conditions.

(1) Applicants for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license shall furnish, at the time of making application, a corporate surety bond in the penal sum of fifty thousand dollars.

(2) Applicants for a motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars. The bond shall be on a form prescribed by the Attorney General of the State of Nebraska and shall be signed by the Nebraska registered agent. The bond shall provide: (a) That the applicant will faithfully perform all the terms and conditions of such license; (b) that the licensed dealer will first fully indemnify any holder of a lien or security interest created pursuant to section 60-164 or article 9, Uniform Commercial Code, whichever applies, in the order of its priority and then any person or other dealer by reason of any loss suffered because of (i) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (ii) the dealer's failure to deliver to the purchaser a clear and marketable title, (iii) the dealer's

misappropriation of any funds belonging to the purchaser, (iv) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, (v) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, (vi) the dealer's failure to remit the proceeds from the sale of any motor vehicle which is subject to a lien or security interest to the holder of such lien or security interest, and (vii) the dealer's failure to pay any person or other dealer for the purchase of a motor vehicle, motorcycle, trailer, or any part or other purchase; and (c) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his or her license and the acts of the Legislature relating to such license. The aggregate liability of the surety shall in no event exceed the penalty of such bond.

Source: Laws 1945, c. 143, § 11, p. 463; Laws 1947, c. 210, § 1, p. 686; Laws 1953, c. 216, § 1, p. 764; R.R.S.1943, § 60-619; Laws 1963, c. 365, § 15, p. 1180; Laws 1967, c. 394, § 11, p. 1238; Laws 1972, LB 1335, § 13; Laws 1974, LB 754, § 15; Laws 1984, LB 825, § 30; Laws 1989, LB 608, § 1; Laws 1999, LB 550, § 41; Laws 1999, LB 632, § 6; Laws 2005, LB 276, § 108; Laws 2007, LB681, § 2.

ARTICLE 15

DEPARTMENT OF MOTOR VEHICLES

Section
60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.
60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.
60-1516. Repealed. Laws 2005, LB 1, § 11.

60-1513 Department of Motor Vehicles Cash Fund; created; use; investment.

The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles 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 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the

electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefor the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator's license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance data base created under section 60-3,136.

Source: Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258.

60-1516 Repealed. Laws 2005, LB 1, § 11.

ARTICLE 18
CAMPER UNITS

Section
60-1801. Camper unit, defined.
60-1803. Permit; application; contents; fee.
60-1804. Department of Motor Vehicles; validation decal; furnish.
60-1807. Permit; renewal; issuance; receipt required.

60-1801 Camper unit, defined.

As used in sections 60-1801 to 60-1808, unless the context otherwise requires, camper unit means any structure designed and intended to be placed on a truck and to provide living quarters and which may be removed from a truck without dismantling or damage when ordinary care is exercised. Camper unit does not include a recreational vehicle as defined in section 60-347, or a mobile home as defined in section 77-3701.

Source: Laws 1969, c. 627, § 1, p. 2526; Laws 1981, LB 168, § 12; Laws 2005, LB 274, § 259.

60-1803 Permit; application; contents; fee.

Every owner of a camper unit shall make application for a permit to the county treasurer or designated county official pursuant to section 23-186 of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer or designated county official of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be issued by the county treasurer or designated county official in the same manner as registration certificates as provided in the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant for permit, at the time of making such application, shall exhibit to the county treasurer or designated county official evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

Source: Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1804 Department of Motor Vehicles; validation decal; furnish.

The Department of Motor Vehicles shall design, procure, and furnish to the county treasurers a validation decal which may be attached to the camper unit as evidence that a permit has been obtained. Each county treasurer shall furnish a validation decal to the person obtaining the permit and such decal shall be attached to the camper unit so as to be clearly visible from the outside of the unit.

Source: Laws 1969, c. 627, § 4, p. 2527; Laws 2005, LB 274, § 261.

60-1807 Permit; renewal; issuance; receipt required.

In issuing such permits or renewals, the county treasurer or designated county official pursuant to section 23-186 shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees

during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

Source: Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262.

ARTICLE 19

ABANDONED MOTOR VEHICLES

Section
60-1901. Abandoned vehicle, defined.
60-1902. Abandoned vehicle; title; vest in local authority or state agency; when.

60-1901 Abandoned vehicle, defined.

(1) A motor vehicle is an abandoned vehicle:

(a) If left unattended, with no license plates or valid In Transit stickers issued pursuant to the Motor Vehicle Registration Act affixed thereto, for more than six hours on any public property;

(b) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(c) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(d) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated; or

(e) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01.

(2) An all-terrain vehicle or minibike is an abandoned vehicle:

(a) If left unattended for more than twenty-four hours on any public property, except a portion thereof on which parking is legally permitted;

(b) If left unattended for more than forty-eight hours, after the parking of such vehicle has become illegal, if left on a portion of any public property on which parking is legally permitted;

(c) If left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated; or

(d) If left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section 60-1903.01.

(3) For purposes of this section:

(a) Public property means any public right-of-way, street, highway, alley, or park or other state, county, or municipally owned property; and

(b) Private property means any privately owned property which is not included within the definition of public property.

(4) No motor vehicle subject to forfeiture under section 28-431 shall be an abandoned vehicle under this section.

Source: Laws 1971, LB 295, § 1; Laws 1999, LB 90, § 1; Laws 2004, LB 560, § 41; Laws 2005, LB 274, § 263.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1902 Abandoned vehicle; title; vest in local authority or state agency; when.

If an abandoned vehicle, at the time of abandonment, has no license plates of the current year or valid In Transit stickers issued pursuant to section 60-376 affixed and is of a wholesale value, taking into consideration the condition of the vehicle, of two hundred fifty dollars or less, title shall immediately vest in the local authority or state agency having jurisdiction thereof as provided in section 60-1904. Any certificate of title issued under this section to the local authority or state agency shall be issued at no cost to such authority or agency.

Source: Laws 1971, LB 295, § 2; Laws 1974, LB 689, § 1; Laws 1975, LB 131, § 1; Laws 1999, LB 90, § 2; Laws 2005, LB 274, § 264.

ARTICLE 24

PARKING LOTS

Section
60-2404. Motor vehicle towed away; lien and disposition; when.
60-2410. Towing and storage fees; liability; lien; notice.

60-2404 Motor vehicle towed away; lien and disposition; when.

A motor vehicle towed away under sections 60-2401 to 60-2411, which is not claimed by the owner within ninety days after towing, is subject to lien and disposition under Chapter 52, article 6, by the person who towed the vehicle.

Source: Laws 1979, LB 348, § 4; Laws 2005, LB 82, § 6.

60-2410 Towing and storage fees; liability; lien; notice.

(1) The owner or other person lawfully entitled to the possession of any vehicle towed or stored shall be charged with the reasonable cost of towing and storage fees. Any such towing or storage fee shall be a lien upon the vehicle under Chapter 52, article 6, and, except as provided in subsection (3) of this section, shall be prior to all other claims. Any person towing or storing a vehicle may retain possession of such vehicle until such charges are paid or, after ninety days, may dispose of such vehicle to satisfy the lien. The lien provided for in this section shall not apply to the contents of any vehicle.

(2) The person towing the motor vehicle shall, within thirty days after towing, notify any lienholder appearing on the certificate of title of the motor vehicle and the owner of the motor vehicle of the towing of the motor vehicle. The notice shall be sent by certified mail, return receipt requested, to the last-known address of the lienholder and owner of the motor vehicle. The notice shall contain:

(a) The make, model, color, year, and vehicle identification number of the motor vehicle;

(b) The name, address, and telephone number of the person who towed the motor vehicle;

(c) The date of towing;

(d) The daily storage fee and the storage fee accrued as of the date of the notification; and

(e) A statement that the motor vehicle is subject to lien and disposition by sale or other manner ninety days after the date of towing under Chapter 52, article 6.

(3) Failure to provide notice as prescribed in subsection (2) of this section shall result in the lien of the person who towed the motor vehicle being subordinate to the lien of the lienholder appearing on the certificate of title and render void any disposition of the motor vehicle by the person who towed the motor vehicle.

Source: Laws 1979, LB 348, § 10; Laws 1988, LB 833, § 4; Laws 2005, LB 82, § 7.

ARTICLE 25
RIDE SHARING

Section
60-2507. Motor vehicle; exemption from certain laws; when.

60-2507 Motor vehicle; exemption from certain laws; when.

A motor vehicle used in a ride-sharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a bus or commercial vehicle under the Motor Vehicle Registration Act or the Nebraska Rules of the Road.

Source: Laws 1981, LB 50, § 7; Laws 1993, LB 370, § 474; Laws 2005, LB 274, § 265.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Rules of the Road, see section 60-601.

ARTICLE 27
MANUFACTURER'S WARRANTY DUTIES

Section
60-2701. Terms, defined.

60-2701 Terms, defined.

As used in sections 60-2701 to 60-2709, unless the context otherwise requires:

(1) Consumer shall mean the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, household, or business purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty;

(2) Motor vehicle shall mean a new motor vehicle as defined in section 60-1401.02 which is sold in this state, excluding recreational vehicles as defined in section 60-347; and

(3) Manufacturer's express warranty shall mean the written warranty, so labeled, of the manufacturer of a new motor vehicle.

Source: Laws 1983, LB 155, § 1; Laws 1989, LB 280, § 10; Laws 2005, LB 274, § 266.

ARTICLE 30
FEES AND TAXATION

Section

60-3001 Repealed. Laws 2005, LB 274, § 286.

60-3002 Repealed. Laws 2005, LB 274, § 286.

60-3003 Repealed. Laws 2005, LB 274, § 286.

60-3004 Repealed. Laws 2005, LB 274, § 286.

60-3005 Repealed. Laws 2005, LB 274, § 286.

60-3005.01 Repealed. Laws 2005, LB 274, § 286.

60-3006 Repealed. Laws 2005, LB 274, § 286.

60-3007 Repealed. Laws 2005, LB 274, § 286.

60-3008 Repealed. Laws 2005, LB 274, § 286.

60-3009 Repealed. Laws 2005, LB 274, § 286.

CHAPTER 61
NATURAL RESOURCES

Article.
2. Department of Natural Resources. 61-205 to 61-219.

ARTICLE 2
DEPARTMENT OF NATURAL RESOURCES

Section
61-205. Department of Natural Resources; general grant of authority.
61-206. Department of Natural Resources; jurisdiction; rules; hearings; orders; powers and duties.
61-210. Department of Natural Resources Cash Fund; created; use; investment.
61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents.
61-219. Compliance with interstate compact or decree stipulations; legislative intent.

61-205 Department of Natural Resources; general grant of authority.

The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Department of Water Resources prior to July 1, 2000. The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Nebraska Natural Resources Commission prior to July 1, 2000, except as otherwise specifically provided.

The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, water measuring devices, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 1, p. 834; C.S.1922, § 8420; C.S.1929, § 81-6301; R.S.1943, § 46-208; Laws 1973, LB 186, § 1; R.S.1943, (1998), § 46-208; Laws 2000, LB 900, § 5; Laws 2006, LB 1226, § 29.

61-206 Department of Natural Resources; jurisdiction; rules; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. Such department shall adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in

any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB 109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1.
Effective date July 18, 2008.

61-210 Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S. 1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB701, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, and (e) credited to the fund from the excise taxes imposed by section 66-1345.01 beginning January 1, 2013.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement and (b) to the extent funds are not expended pursuant to subdivision (a) of this subsection, the department may conduct a statewide assessment of short-term

and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that two million seven hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2009-10 through FY2018-19.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

Source: Laws 2007, LB701, § 25.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-219 Compliance with interstate compact or decree stipulations; legislative intent.

It is the intent of the Legislature that the Department of Natural Resources may undertake measures in fiscal year 2006-07 to further facilitate compliance with interstate compact or decree stipulations.

Source: Laws 2007, LB701, § 32.

CHAPTER 64
NOTARIES PUBLIC

Article.
1. General Provisions.
   (a) Appointment and Powers. 64-101 to 64-113.
2. Recognition of Acknowledgments. 64-210, 64-214.

ARTICLE 1
GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section
64-101. Appointment; qualifications; term.
64-101.01. Written examination required.
64-102. Commission; how obtained; bond.
64-103. Commission; signature; seal; filing and approval of bond; delivery.
64-105. Notarial acts prohibited; when.
64-105.01. Notary public; disqualified; when.
64-105.02. Notarization; when.
64-105.03. Notary public; unauthorized practice of law; prohibited.
64-105.04. Change of residence; duties.
64-108. Summons; issuance, when authorized.
64-113. Removal; grounds; procedure; penalty.

(a) APPOINTMENT AND POWERS

64-101 Appointment; qualifications; term.

(1) The Secretary of State may appoint and commission such number of persons to the office of notary public as he or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 64-101.01.

(6) No appointment shall be made if such applicant has been convicted of a felony or other crime involving fraud or dishonesty.

(7) No appointment shall be made until such applicant has attained the age of nineteen years nor unless such applicant certifies to the Secretary of State under oath that he or she has carefully read and understands the laws relating

to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to the office and keep records according to law.

(8) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

Source: Laws 1869, § 1, p. 20; G.S.1873, p. 493; Laws 1883, c. 58, § 1, p. 248; R.S.1913, § 5517; Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 467; R.S.1943, § 64-101; Laws 1945, c. 145, § 1, p. 487; Laws 1951, c. 205, § 1, p. 763; Laws 1967, c. 396, § 2, p. 1241; Laws 1971, LB 88, § 1; Laws 1976, LB 622, § 1; Laws 2004, LB 315, § 2.

64-101.01 Written examination required.

The written examination required by section 64-101 shall be developed and administered by the Secretary of State and shall consist of questions relating to laws, procedures, and ethics for notaries public. All applicants for commission as a notary public on and after July 16, 2004, shall be required to take and pass the examination prior to being commissioned.

Source: Laws 2004, LB 315, § 3.

64-102 Commission; how obtained; bond.

Any person may apply for a commission authorizing the applicant to act as a notary public anywhere in the State of Nebraska, and thereupon the Secretary of State may, at his or her discretion, issue a commission authorizing such notary public to act as such anywhere in the State of Nebraska. A general commission shall not authorize the holder thereof to act as a notary public anywhere in the State of Nebraska until a bond in the sum of fifteen thousand dollars, with an incorporated surety company as surety, has been executed and approved by and filed in the office of the Secretary of State. Upon the filing of such bond with the Secretary of State and the issuance of such commission, such notary public shall be authorized and empowered to perform any and all the duties of a notary public in any and all the counties in the State of Nebraska. Such bond shall be conditioned for the faithful performance of the duties of such office. Such person so appointed to the office of notary public shall make oath or affirmation, to be endorsed on such bond, and subscribed by him or her before some officer authorized by law to administer oaths, and by him or her certified thereon, that he or she will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially discharge and perform the duties of the office of notary public.

Source: Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 468; R.S.1943, § 64-102; Laws 1945, c. 145, § 2, p. 489; Laws 1967, c. 396, § 3, p. 1242; Laws 1988, LB 1030, § 47; Laws 2004, LB 315, § 4.

64-103 Commission; signature; seal; filing and approval of bond; delivery.

When any person is appointed to the office of notary public, the Secretary of State shall cause his or her signature or a facsimile thereof to be affixed to the commission and he or she shall affix thereto the great seal of the state. Upon the filing and approval of the bond, as provided for in section 64-102, the

Secretary of State shall mail or deliver the commission to the applicant. The form and format of the commission shall be prescribed by the Secretary of State.

Source: Laws 1869, § 2, p. 21; G.S.1873, p. 493; R.S.1913, § 5518; C.S.1922, § 4814; C.S.1929, § 64-102; R.S.1943, § 64-103; Laws 1945, c. 145, § 3, p. 489; Laws 1963, c. 368, § 1, p. 1186; Laws 1967, c. 396, § 4, p. 1243; Laws 1988, LB 1030, § 48; Laws 2004, LB 315, § 5.

64-105 Notarial acts prohibited; when.

(1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1 and 2, if the principal:

(a) Is not in the presence of the notary public at the time of the notarial act; and

(b) Is not personally known to the notary public or identified by the notary public through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the individual and shows to the notary public documentary identification as described in subdivision (a)(i) of this subsection; and

(b) Personal knowledge of identity or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Source: Laws 2004, LB 315, § 6.

64-105.01 Notary public; disqualified; when.

A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives.

Source: Laws 2004, LB 315, § 7.

64-105.02 Notarization; when.

(1) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(a) The mark is affixed in the presence of the notary public and of two witnesses unaffected by the document;

(b) Both witnesses sign their own names beside the mark;

(c) The notary public writes below the mark: ''Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary public''; and

(d) The notary public notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(2) A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(a) The person directs the notary public to do so in the presence of two witnesses unaffected by the document;

(b) The notary public signs the person's name in the presence of the person and the witnesses;

(c) Both witnesses sign their own names beside the signature;

(d) The notary public writes below the signature: ''Signature affixed by notary public in the presence of (names and addresses of person and two witnesses)''; and

(e) The notary public notarizes the signature through an acknowledgment, jurat, or signature witnessing.

Source: Laws 2004, LB 315, § 8.

64-105.03 Notary public; unauthorized practice of law; prohibited.

(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.

(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.

(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: ''I am not an attorney and have no authority to give advice on immigration or other legal matters''.

(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.

(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.

Source: Laws 2004, LB 315, § 9.

64-105.04 Change of residence; duties.

A notary public shall notify the Secretary of State of any change of his or her residence no later than forty-five days after such change. Information provided on the change-of-address form shall include the notary public's name as it appears on his or her commission, the date the commission expires, and the notary public's new address. The Secretary of State shall prescribe forms consistent with the requirements of this section.

Source: Laws 2004, LB 315, § 10.

64-108 Summons; issuance, when authorized.

Every notary public, when notice by a party to any civil suit pending in any court of this state upon any adverse party for the taking of any testimony of witnesses by deposition, or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him or her, or when a special commission issued out of any court of any state or country without this state, together with notice for the taking of testimony by depositions or commissions, has been deposited with him or her, is empowered to issue summons and command the presence before him or her of witnesses. All sheriffs and constables in this state are required to serve and return all process issued by notaries public in the taking of testimony of witnesses by commission or deposition.

Source: Laws 1869, § 7, p. 23; G.S.1873, p. 495; R.S.1913, § 5523; C.S.1922, § 4819; C.S.1929, § 64-107; R.S.1943, § 64-108; Laws 2005, LB 348, § 18.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. Such appointee may summon witnesses, in the manner provided by section 64-108, to appear at the time specified in the notice, and he or she may take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the Secretary of State. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf, which cross-examination and testimony shall be likewise certified to the Secretary of State. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she is satisfied that the charges are substantially proved, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be

forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, or (b) being convicted of a felony or other crime involving fraud or dishonesty.

Source: Laws 1869, § 14, p. 25; G.S.1873, p. 497; R.S.1913, § 5529; C.S.1922, § 4825; C.S.1929, § 64-113; R.S.1943, § 64-113; Laws 1945, c. 145, § 10, p. 493; Laws 1967, c. 396, § 8, p. 1244; Laws 2004, LB 315, § 11.

ARTICLE 2

RECOGNITION OF ACKNOWLEDGMENTS

Section
64-210. Ink stamp seal; contents.
64-214. Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.

64-210 Ink stamp seal; contents.

(1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official ink stamp seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, his or her name as commissioned, and the date of expiration of his or her commission.

(2) A notary public shall authenticate all of his or her official acts with such seal.

(3) A notary public whose commission was issued by the Secretary of State before September 1, 2007, is not required to purchase a new ink stamp seal in order to comply with this section until the notary public's commission expires. Upon renewal, each notary public shall have engraved on his or her official ink stamp seal all of the information required in subsection (1) of this section.

Source: Laws 1969, c. 523, § 10, p. 2144; Laws 1971, LB 88, § 2; Laws 2004, LB 315, § 12; Laws 2007, LB382, § 1.

64-214 Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.

(1) It is lawful for any stockholder, director, officer, employee, or agent of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank.

(2) Acknowledgments heretofore taken of any person to any written instrument given to or by a bank or any oath administered to any stockholder, director, officer, employee, or agent of a bank by any notary public who was a

stockholder, director, officer, employee, or agent of the bank shall be deemed to be lawful, valid, and binding.

Source: Laws 1957, c. 316, § 1, p. 1134; R.R.S.1943, § 76-217.04; Laws 1976, LB 622, § 5; Laws 2008, LB851, § 26.
Operative date March 20, 2008.

CHAPTER 66
OILS, FUELS, AND ENERGY

Article.

ARTICLE 4
MOTOR VEHICLE FUEL TAX

Section

Section
66-4,100. Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.
66-4,103. Interstate commerce exemption.
66-4,105. Motor fuels; use; excise tax; amount; use, defined.
66-4,106. Excise tax; payment; report; duty to collect.
66-4,114. Motor fuels; importation; liable for tax; exception.
66-4,116. Motor fuels; transportation; interstate commerce exempt.
66-4,118. Repealed. Laws 2004, LB 983, § 71.
66-4,119. Repealed. Laws 2004, LB 983, § 71.
66-4,120. Repealed. Laws 2004, LB 983, § 71.
66-4,121. Repealed. Laws 2004, LB 983, § 71.
66-4,124. Repealed. Laws 2004, LB 983, § 71.
66-4,124.01. Tax credit gasoline; certain purchases; repeal of section, effect.
66-4,125. Repealed. Laws 2004, LB 983, § 71.
66-4,126. Repealed. Laws 2004, LB 983, § 71.
66-4,127. Repealed. Laws 2004, LB 983, § 71.
66-4,128. Repealed. Laws 2004, LB 983, § 71.
66-4,129. Repealed. Laws 2004, LB 983, § 71.
66-4,130. Repealed. Laws 2004, LB 983, § 71.
66-4,131. Repealed. Laws 2004, LB 983, § 71.
66-4,132. Repealed. Laws 2004, LB 983, § 71.
66-4,134. Repealed. Laws 2004, LB 983, § 71.
66-4,140. Motor fuels; excise tax; disposition; payment.
66-4,141. Excise tax; tax rate per gallon; computations.
66-4,142. Repealed. Laws 2004, LB 983, § 71.
66-4,143. Materiel administrator; submit report; contents.
66-4,144. Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Roads; provide information.
66-4,145. Additional excise tax.
66-4,146. Fuels; use; additional excise tax.
66-4,146.01. Floor-stocks tax on agricultural ethyl alcohol; rate; payment.
66-4,147. Receipts from excise tax; disposition.
66-4,149. Rules and regulations.

66-482 Terms, defined.

For purposes of sections 66-482 to 66-4,149:

(1) Motor vehicle shall have the same definition as in section 60-339;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States and which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;

(6) Distributor shall mean any person who acquires ownership of motor fuels directly from a producer or supplier at or from a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state;

(7) Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale;

(8) Retailer shall mean any person who acquires motor fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year;

(17) Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state;

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(19) Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene;

(20) Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel;

(21) Motor fuels shall mean motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel;

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol under the provisions described in section 66-1344; and

(23) Biodiesel facility shall mean a plant which produces biodiesel.

Source: Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws 1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2. Operative date July 18, 2008.

Cross References

For additional definitions, see section 66-712.

66-483 Producer, supplier, distributor, wholesaler, importer, or exporter; application for license; contents.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall file an application with the department. The application shall be filed upon a form prepared and furnished by the department. If the applicant is an individual, the application shall include the applicant's social security number. The application shall contain such information as the department deems necessary.

Source: Laws 1925, c. 172, § 2, p. 449; Laws 1929, c. 149, § 1, p. 520; C.S.1929, § 66-402; Laws 1933, c. 106, § 1, p. 433; C.S.Supp.,1941, § 66-402; R.S.1943, § 66-402; R.S.1943, (1990),

§ 66-402; Laws 1991, LB 627, § 10; Laws 1992, LB 1013, § 3; Laws 1994, LB 1160, § 56; Laws 1997, LB 752, § 149; Laws 2004, LB 983, § 6.

66-484 Producer, supplier, distributor, wholesaler, importer, or exporter; license required.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall procure a license from the department permitting him or her to transact such business within the State of Nebraska. After reviewing the application required in section 66-483, the department may issue a license as provided in this section.

Source: Laws 1925, c. 172, § 3, p. 449; Laws 1929, c. 149, § 2, p. 521; C.S.1929, § 66-403; Laws 1931, c. 114, § 1, p. 333; Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S.1943, § 66-403; Laws 1969, c. 528, § 1, p. 2160; Laws 1973, LB 528, § 1; Laws 1981, LB 360, § 2; R.S.1943, (1990), § 66-403; Laws 1991, LB 627, § 11; Laws 1994, LB 1160, § 57; Laws 2004, LB 983, § 7.

66-485 Producer, supplier, distributor, wholesaler, exporter, or importer; security.

The department, for the first year of a new license or whenever it deems it necessary to insure compliance with sections 66-482 to 66-4,149, may require any producer, supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately three times the total estimated average monthly tax liability payable by such producer, supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such producer, supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

Source: Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-404; Laws 1949, c. 186, § 1, p. 537; Laws 1969, c. 528, § 2, p. 2160; Laws 1973, LB 397, § 1; Laws 1973, LB 528, § 2; Laws 1981, LB 360, § 3; R.S.1943, (1990), § 66-404; Laws 1991, LB 627, § 12; Laws 1994, LB 1160, § 58; Laws 2000, LB 1067, § 1; Laws 2004, LB 983, § 8; Laws 2008, LB846, § 3. Operative date July 18, 2008.

66-486 Motor fuel tax; collection; commission.

(1) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two

and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

(2) In lieu of the expense of collecting and remitting the diesel fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each reporting period.

(3) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the producer, supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(4) In consideration of receiving the commission, the producer, supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such producer's, supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor fuels.

(5) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1933, c. 106, § 2, p. 435; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-407; Laws 1969, c. 528, § 3, p. 2160; Laws 1973, LB 528, § 4; R.S.1943, (1990), § 66-407; Laws 1991, LB 627, § 13; Laws 1994, LB 1160, § 59; Laws 1998, LB 1161, § 15; Laws 2001, LB 168, § 1; Laws 2004, LB 983, § 9.

66-487 Producer, supplier, distributor, wholesaler, exporter, and importer; records required.

(1) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor fuels, to be based on gross gallons, received, purchased, refined, manufactured, or obtained and imported by a producer, supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor fuels so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor fuels imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed producer, supplier, distributor, wholesaler, or

importer sells to another licensed producer, supplier, distributor, wholesaler, importer, or exporter any motor fuels, such seller shall keep as part of its records the name, address, and license number of the producer, supplier, distributor, wholesaler, importer, or exporter to whom the motor fuels were sold along with the date, quantity, and location where the motor fuels were sold.

(2) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall include the information prescribed in subsection (1) of this section with the return required by section 66-488.

(3) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

Source: Laws 1925, c. 172, § 4, p. 450; Laws 1927, c. 151, § 1, p. 405; Laws 1929, c. 149, § 3, p. 521; C.S.1929, § 66-404; Laws 1933, c. 106, § 3, p. 435; C.S.Supp.,1941, § 66-404; R.S.1943, § 66-408; Laws 1967, c. 397, § 2, p. 1246; Laws 1988, LB 1039, § 2; R.S.1943, (1990), § 66-408; Laws 1991, LB 627, § 14; Laws 1994, LB 1160, § 60; Laws 2000, LB 1067, § 2; Laws 2001, LB 168, § 2; Laws 2004, LB 983, § 10.

66-488 Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.

(1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or

legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

(2) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 448; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 127; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 86, § 2, p. 367; Laws 1941, c. 133, § 1, p. 522; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(1), p. 473; Laws 1943, c. 141, § 1(1), p. 482; R.S.1943, § 66-409; Laws 1963, c. 376, § 2, p. 1210; R.S.1943, (1990), § 66-409; Laws 1991, LB 627, § 15; Laws 1994, LB 1160, § 61; Laws 2000, LB 1067, § 3; Laws 2001, LB 168, § 3; Laws 2004, LB 983, § 11; Laws 2008, LB846, § 4.
Operative date July 18, 2008.

66-489 Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.

(1) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax of seven and one-half cents per gallon upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (a) the required taxes on the motor fuels have been paid, (b) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (d) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and two and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except

that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund. For fiscal years 2007-08 through 2011-12, if the total receipts from the excise tax authorized in this subsection and designated for deposit in the Agricultural Alcohol Fuel Tax Fund exceed five hundred fifty thousand dollars, the State Treasurer shall deposit amounts in excess of five hundred fifty thousand dollars in the Ethanol Production Incentive Cash Fund.

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(7) In the case of diesel fuel, there shall be no tax on the motor fuels reported if (a) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (b) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545.

(8) The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 449; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 87, § 2, p. 367; Laws 1941, c. 133, § 1, p. 523; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(2), p. 474; Laws 1943, c. 141, § 1(2), p. 483; R.S.1943, § 66-410; Laws 1953, c. 225, § 1, p. 792; Laws 1955, c. 247, § 1, p. 780; Laws 1957, c. 282, § 1, p. 1028; Laws 1963, c. 376, § 3, p. 1211; Laws 1965, c. 391, § 1, p. 1249; Laws 1967, c. 397, § 3, p. 1248; Laws 1969, c. 528, § 4, p. 2161; Laws 1969, c. 529, § 1, p. 2167; Laws 1971, LB 776, § 2; Laws 1972, LB 1208, § 1; Laws 1977, LB 139, § 2; Laws 1977, LB 52, § 2; Laws 1979, LB 571, § 3; Laws 1980, LB 722, § 6; Laws 1981, LB 104, § 1; Laws 1981, LB 360, § 4; Laws 1985, LB 346, § 1; Laws 1988, LB 1039, § 3; Laws 1990, LB 1124, § 2; R.S.1943, (1990), § 66-410; Laws 1991, LB 627, § 16; Laws 1994, LB 1160, § 62; Laws 1996, LB 1121, § 3; Laws 2004, LB 983, § 12; Laws 2004, LB 1065, § 1; Laws 2006, LB 1003, § 5; Laws 2007, LB322, § 12; Laws 2008, LB846, § 5.
Operative date July 1, 2009.

66-489.01 Motor fuels blending agent or fuel expander; when taxed.

Methanol, benzine, benzol, naphtha, kerosene, and any other volatile, flammable, or combustible liquid suitable for use as a motor fuels blending agent or fuel expander shall be exempt from the taxes imposed under sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 unless and until such methanol, benzine, benzol, naphtha, kerosene, or other blending agent or fuel expander is blended with motor fuels or placed directly into the supply tank of a licensed motor vehicle. Any person blending such products with motor fuels or placing such products into the supply tank of a licensed motor vehicle shall pay the taxes imposed under such sections directly to the department on forms provided by the department at the same time as the motor fuels with which it is blended become subject to taxation or, if the tax imposed on the motor fuels has already been paid, upon blending. The taxes imposed by this section shall not apply to fuel additives which are used to enhance engine performance or prevent fuel line freezing or clogging when placed directly into the supply tank of a motor vehicle in quantities of one quart or less.

Source: Laws 1996, LB 1121, § 2; Laws 2004, LB 983, § 13; Laws 2008, LB846, § 6.
Operative date July 18, 2008.

66-489.02 Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor,

wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the Energy Information Administration of the United States Department of Energy and shall be a single, statewide average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

(3) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Roads;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 11.
Operative date July 18, 2008.

66-490 Repealed. Laws 2004, LB 983, § 71.

66-491 Repealed. Laws 2004, LB 983, § 71.

66-492 Repealed. Laws 2004, LB 983, § 71.

66-494 Repealed. Laws 2004, LB 983, § 71.

66-495 Purchase of undyed diesel fuel; exemption certificate; requirements; prohibited acts; penalty.

(1) A purchaser of undyed diesel fuel may present an exemption certificate to the seller when not more than fifty gallons of such fuel is placed directly into the supply tank of a temperature control unit or power take-off unit. To qualify for this exemption, the supply tank of the temperature control unit or power take-off unit cannot be connected to the engine which provides motive power to a motor vehicle or connected to any fuel supply tank connected to the engine of a motor vehicle.

(2) The seller of undyed diesel fuel may in good faith accept the exemption certificate and sell undyed diesel fuel without collecting the tax. The seller may accept an exemption certificate for multiple purchases. Such a certificate shall

be renewed annually. If the seller is a producer, supplier, distributor, wholesaler, or importer, the seller may deduct the number of gallons sold without the tax from the return for the period during which the fuel was sold or for a subsequent period. If the seller is not a producer, supplier, distributor, wholesaler, or importer, the seller may provide a monthly exemption certificate to the producer, distributor, wholesaler, or importer or other supplier of the taxed diesel fuel for the total number of gallons of undyed diesel fuel sold without tax during the prior month.

(3) Receipt of an exemption certificate taken in good faith shall be conclusive proof for the seller that the sale was exempt.

(4) Any person who wrongfully claims an exemption and presents an exemption certificate shall be liable for the tax on the diesel fuel. The department shall, on the basis of information available, determine the tax that would have been due on such transaction and assess the tax against such person.

(5) Any person who unlawfully issues an exemption certificate shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2004, LB 983, § 14.

66-495.01 Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment.

(1) Except as provided in subsection (5) of this section, the fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel.

(2) No retailer of diesel fuel shall sell or offer to sell diesel fuel that contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel unless the fuel dispensing device is clearly marked with a notice that the fuel is dyed or chemically marked.

(3) Any law enforcement officer, any carrier enforcement officer, or any agent of the department who has reasonable grounds to suspect a violation of this section may inspect the fuel in the fuel supply tank of any motor vehicle or the fuel storage facilities and dispensing devices of any diesel fuel retailer to determine compliance with this section. Fuel inspections may also be conducted in the course of safety or other inspections authorized by law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of one thousand dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of two thousand five hundred dollars for the current violation. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation. The penalty shall

be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(5) Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel, except high-sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by sections 66-482 to 66-4,149 are paid to the department by the state, county, municipality, or other political subdivision. The state, county, municipality, or other political subdivision shall pay the tax and file a return concerning the tax to the department in like manner and form as is required under sections 66-489.02, 66-4,105, and 66-4,106.

(6) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 2004, LB 983, § 15; Laws 2008, LB846, § 7.
Operative date July 18, 2008.

66-496 Stored fuel; payment of tax; when; reports.

(1) No tax shall be collected with respect to motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state or refined at a refinery in this state and stored thereat until the motor fuels are withdrawn for sale or use in this state or are loaded at the terminal or refinery into transportation equipment for shipment or delivery to a destination in this state. No tax shall be collected with respect to motor fuels manufactured at an ethanol or biodiesel facility in this state nor with respect to motor fuels owned by a producer, but stored at another location in this state, until the motor fuels are withdrawn for sale or use in this state or are loaded at the ethanol or biodiesel facility or other storage into transportation equipment for shipment or delivery to a destination in this state.

(2) When motor fuels are withdrawn or loaded as provided in this section, the producer, supplier, or distributor in this state shall be liable for payment of the motor fuels tax.

(3) The person owning and operating such refinery, barge, barge line terminal, pipeline terminal, or ethanol or biodiesel facility may, at the department's request, make and file such verified reports of operations within the state which may include reporting all motor fuels loaded within this state for delivery in another state and such other information as shall be required by the department.

Source: Laws 1935, c. 161, § 1, p. 588; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 567; Laws 1939, c. 87, § 2, p. 368; Laws 1941, c. 133, § 1, p. 524; C.S.Supp.,1941, § 66-405;

Laws 1943, c. 138, § 2(5), p. 475; Laws 1943, c. 141, § 1(5), p. 484; R.S.1943, § 66-412; Laws 1955, c. 248, § 1, p. 783; Laws 1969, c. 528, § 9, p. 2164; Laws 1973, LB 528, § 7; Laws 1988, LB 1039, § 4; R.S.1943, (1990), § 66-412; Laws 1991, LB 627, § 23; Laws 1994, LB 1160, § 67; Laws 2004, LB 983, § 16.

66-498 Tax previously paid; credit allowed; when.

If such tax has been paid upon any of the ingredients or compounds under the provisions of section 66-489, credit shall be allowed for such tax previously paid, in computing the tax upon such compound, so that the motor fuels used in the compound are not taxed twice.

Source: Laws 1925, c. 172, § 6, p. 451; C.S.1929, § 66-406; R.S.1943, § 66-415; R.S.1943, (1990), § 66-415; Laws 2004, LB 983, § 17.

66-499 Tax received; credit to Highway Trust Fund; credits and refunds; balance to Highway Cash Fund.

Unless otherwise provided, all sums of money received under sections 66-489 and 66-4,105 by the State Treasurer shall be credited to the Highway Trust Fund. Credits and refunds of the tax provided for in such sections allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Cash Fund.

Source: Laws 1925, c. 172, § 12, p. 453; Laws 1929, c. 166, § 2, p. 574; C.S.1929, § 66-411; Laws 1933, c. 110, § 1, p. 446; Laws 1937, c. 148, § 4, p. 568; Laws 1939, c. 87, § 2, p. 359; Laws 1941, c. 133, § 2, p. 524; Laws 1941, c. 134, § 10, p. 535; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(1), p. 470; Laws 1943, c. 139, § 1(1), p. 477; R.S.1943, § 66-421; Laws 1947, c. 214, § 1, p. 696; Laws 1969, c. 530, § 1, p. 2170; Laws 1969, c. 584, § 62, p. 2384; Laws 1972, LB 1065, § 1; Laws 1972, LB 343, § 1; Laws 1986, LB 599, § 15; Laws 1989, LB 258, § 4; R.S.1943, (1990), § 66-421; Laws 1991, LB 627, § 25; Laws 2004, LB 983, § 18; Laws 2008, LB846, § 8.
Operative date July 1, 2009.

66-4,100 Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.

The Highway Cash Fund and the Roads Operations Cash Fund are hereby created. If bonds are issued pursuant to subsection (2) of section 39-2223, the balance of the share of the Highway Trust Fund allocated to the Department of Roads and deposited into the Highway Restoration and Improvement Bond Fund as provided in subsection (6) of section 39-2215 and the balance of the money deposited in the Highway Restoration and Improvement Bond Fund as provided in section 39-2215.01 shall be transferred by the State Treasurer, on or before the last day of each month, to the Highway Cash Fund. If no bonds are issued pursuant to subsection (2) of section 39-2223, the share of the Highway Trust Fund allocated to the Department of Roads shall be transferred by the State Treasurer on or before the last day of each month to the Highway Cash Fund.

The Legislature may direct the State Treasurer to transfer funds from the Highway Cash Fund to the Roads Operations Cash Fund. Both funds shall be expended by the department (1) for acquiring real estate, road materials, equipment, and supplies to be used in the construction, reconstruction, improvement, and maintenance of state highways, (2) for the construction, reconstruction, improvement, and maintenance of state highways, including grading, drainage, structures, surfacing, roadside development, landscaping, and other incidentals necessary for proper completion and protection of state highways as the department shall, after investigation, find and determine shall be for the best interests of the highway system of the state, either independent of or in conjunction with federal-aid money for highway purposes, (3) for the share of the department of the cost of maintenance of state aid bridges, (4) for planning studies in conjunction with federal highway funds for the purpose of analyzing traffic problems and financial conditions and problems relating to state, county, township, municipal, federal, and all other roads in the state and for incidental costs in connection with the federal-aid grade crossing program for roads not on state highways, (5) for tests and research by the department or proportionate costs of membership, tests, and research of highway organizations when participated in by the highway departments of other states, (6) for the payment of expenses and costs of the Board of Examiners for County Highway and City Street Superintendents as set forth in section 39-2310, and (7) for support of the public transportation assistance program established under section 13-1209 and the intercity bus system assistance program established under section 13-1213.

Any money in the Highway Cash Fund and the Roads Operations Cash Fund not needed for current operations of the department shall, as directed by the Director-State Engineer to the State Treasurer, be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, subject to approval by the board of each investment. All income received as a result of such investment shall be placed in the Highway Cash Fund.

Source: Laws 1937, c. 148, § 4, p. 570; Laws 1939, c. 84, § 2, p. 363; Laws 1941, c. 133, § 2, p. 525; Laws 1941, c. 134, § 10, p. 536; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(4), p. 472; Laws 1943, c. 139, § 1(4), p. 479; R.S.1943, § 66-424; Laws 1947, c. 214, § 4, p. 698; Laws 1953, c. 131, § 15, p. 410; Laws 1965, c. 393, § 1, p. 1257; Laws 1969, c. 530, § 3, p. 2171; Laws 1971, LB 21, § 1; Laws 1972, LB 1496, § 2; Laws 1986, LB 599, § 16; Laws 1988, LB 632, § 19; Laws 1990, LB 602, § 3; R.S. 1943, (1990), § 66-424; Laws 1994, LB 1066, § 51; Laws 1994, LB 1194, § 15; Laws 2004, LB 1144, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-4,103 Interstate commerce exemption.

The provisions of sections 66-482 to 66-4,103 shall not apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be

permitted under the provisions of the Constitution and laws of the United States.

Source: Laws 1925, c. 172, § 10, p. 452; C.S.1929, § 66-409; R.S.1943, § 66-420; Laws 1987, LB 523, § 8; R.S.1943, (1990), § 66-420; Laws 2008, LB846, § 9.
Operative date July 18, 2008.

66-4,105 Motor fuels; use; excise tax; amount; use, defined.

There is hereby levied and imposed an excise tax of seven and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146, upon the use of all motor fuels used in this state and due the State of Nebraska under section 66-489. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by Chapter 66, article 4, other than any commissions provided under such article. For purposes of this section and section 66-4,106, use shall mean the purchase or consumption of motor fuels in this state. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1931, c. 130, § 1, p. 363; Laws 1935, c. 155, § 2, p. 573; Laws 1935, Spec. Sess., c. 16, § 2, p. 129; Laws 1937, c. 148, § 2, p. 567; Laws 1939, c. 84, § 3, p. 363; Laws 1941, c. 133, § 3, p. 526; C.S.Supp.,1941, § 66-416; Laws 1943, c. 138, § 3, p. 476; R.S.1943, § 66-428; Laws 1953, c. 225, § 3, p. 794; Laws 1955, c. 247, § 3, p. 781; Laws 1957, c. 282, § 3, p. 1029; Laws 1963, c. 379, § 1, p. 1218; Laws 1965, c. 391, § 3, p. 1251; Laws 1969, c. 529, § 2, p. 2168; Laws 1971, LB 776, § 3; Laws 1972, LB 1208, § 3; Laws 1973, LB 397, § 4; Laws 1977, LB 139, § 3; Laws 1977, LB 52, § 3; Laws 1979, LB 571, § 4; Laws 1980, LB 722, § 8; Laws 1981, LB 104, § 2; Laws 1981, LB 360, § 7; Laws 1984, LB 767, § 14; Laws 1985, LB 346, § 3; Laws 1988, LB 1039, § 5; Laws 1990, LB 1124, § 3; R.S.1943, (1990), § 66-428; Laws 1991, LB 627, § 27; Laws 1994, LB 1160, § 68; Laws 2004, LB 983, § 19; Laws 2008, LB846, § 10.
Operative date July 1, 2009.

66-4,106 Excise tax; payment; report; duty to collect.

Every person using motor fuels subject to taxation on the use thereof under sections 66-4,105 and 66-4,114 shall pay the excise taxes and make a report concerning the same to the department in like manner, form, and time as is required by sections 66-488 and 66-489 for producers, suppliers, distributors, wholesalers, or importers of motor fuels. No such payment of tax or report shall be required if such tax has been paid and the report has been made for such user by any producer, supplier, distributor, wholesaler, or importer licensed under section 66-484. Producers, suppliers, distributors, wholesalers, or importers or other persons having paid such tax or liable for its payment shall collect the amount thereof from any person to whom such motor fuels are sold in this state along with the selling price thereof.

Source: Laws 1931, c. 130, § 2, p. 364; C.S.Supp.,1941, § 66-417; Laws 1943, c. 141, § 2, p. 485; R.S.1943, § 66-429; Laws 1963, c. 373,

§ 9, p. 1199; Laws 1988, LB 1039, § 6; R.S.1943, (1990), § 66-429; Laws 1991, LB 627, § 28; Laws 1994, LB 1160, § 69; Laws 2004, LB 983, § 20.

66-4,114 Motor fuels; importation; liable for tax; exception.

Motor fuels in the supply tank of any qualified motor vehicle as defined in section 66-1416 which is regularly connected with the carburetor of the engine of any such vehicle and which is brought into this state shall be liable for the payment of the tax imposed by this state upon motor fuels under sections 66-489, 66-489.02, and 66-4,105 except when a trip permit is used as provided in the International Fuel Tax Agreement Act.

Source: Laws 1935, c. 160, § 2, p. 584; C.S.Supp.,1941, § 66-426; R.S. 1943, § 66-441; Laws 1967, c. 403, § 1, p. 1262; Laws 1981, LB 360, § 8; R.S.1943, (1990), § 66-441; Laws 1991, LB 627, § 37; Laws 1992, LB 1013, § 5; Laws 1996, LB 1218, § 18; Laws 2000, LB 1067, § 7; Laws 2004, LB 983, § 21; Laws 2008, LB846, § 12.
Operative date July 18, 2008.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

66-4,116 Motor fuels; transportation; interstate commerce exempt.

The Legislature declares that it does not intend to place any burden upon the transportation of motor fuels in interstate commerce under such circumstances as the Constitution and statutes of the United States of America preclude, but deems the tax provided for in section 66-4,114 and the regulations as provided herein to be necessary to the effective collection of a tax on motor fuels used in motor vehicles upon the highways of this state.

Source: Laws 1935, c. 160, § 5, p. 585; C.S.Supp.,1941, § 66-429; R.S. 1943, § 66-444; R.S.1943, (1990), § 66-444; Laws 2004, LB 983, § 22.

66-4,118 Repealed. Laws 2004, LB 983, § 71.

66-4,119 Repealed. Laws 2004, LB 983, § 71.

66-4,120 Repealed. Laws 2004, LB 983, § 71.

66-4,121 Repealed. Laws 2004, LB 983, § 71.

66-4,124 Repealed. Laws 2004, LB 983, § 71.

66-4,124.01 Tax credit gasoline; certain purchases; repeal of section, effect.

The repeal of section 66-4,124 by Laws 2004, LB 983, applies to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 2004, LB 983, § 24.

66-4,125 Repealed. Laws 2004, LB 983, § 71.

66-4,126 Repealed. Laws 2004, LB 983, § 71.

66-4,127 Repealed. Laws 2004, LB 983, § 71.

66-4,128 Repealed. Laws 2004, LB 983, § 71.

66-4,129 Repealed. Laws 2004, LB 983, § 71.

66-4,130 Repealed. Laws 2004, LB 983, § 71.

66-4,131 Repealed. Laws 2004, LB 983, § 71.

66-4,132 Repealed. Laws 2004, LB 983, § 71.

66-4,134 Repealed. Laws 2004, LB 983, § 71.

66-4,140 Motor fuels; excise tax; disposition; payment.

(1) Each producer, supplier, distributor, wholesaler, or importer required by section 66-489 to pay motor fuels taxes shall, in addition to all other taxes provided by law, pay an excise tax at a rate set pursuant to section 66-4,144 for motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska as motor fuels suitable for retail sale. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund if bonds are issued pursuant to subsection (2) of section 39-2223 and to the Highway Cash Fund if no bonds are issued pursuant to such subsection.

(2) Producers, suppliers, distributors, wholesalers, and importers of motor fuels subject to taxation under subsection (1) of this section shall pay such excise tax and shall make a report concerning the tax in like manner, form, and time and be allowed the same exemptions, deductions, and rights of reimbursement as are authorized producers, suppliers, distributors, wholesalers, or importers for taxes paid pursuant to Chapter 66, article 4.

Source: Laws 1980, LB 722, § 1; Laws 1986, LB 599, § 18; Laws 1988, LB 632, § 20; Laws 1988, LB 1039, § 7; Laws 1989, LB 258, § 6; Laws 1990, LB 602, § 4; R.S.1943, (1990), § 66-473; Laws 1991, LB 627, § 54; Laws 1994, LB 1160, § 73; Laws 2004, LB 983, § 23.

66-4,141 Excise tax; tax rate per gallon; computations.

(1) Upon receipt of the cost figures required by section 66-4,143, the department shall determine the statewide average cost by dividing the total amount paid for motor fuels by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor fuels purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-4,144.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be

made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor fuels producers, suppliers, distributors, wholesalers, importers, and compressed fuel retailers at least five days prior to the first day of any semiannual period during which the tax is to be adjusted. Such tax rate shall be utilized in computing the taxes due for the period specified by the department.

Source: Laws 1980, LB 722, § 3; Laws 1981, LB 172, § 3; Laws 1985, LB 112, § 1; Laws 1990, LB 1124, § 6; R.S.1943, (1990), § 66-474; Laws 1991, LB 627, § 55; Laws 1994, LB 1160, § 74; Laws 1995, LB 182, § 33; Laws 1998, LB 1161, § 16; Laws 2000, LB 1067, § 8; Laws 2004, LB 983, § 25.

66-4,142 Repealed. Laws 2004, LB 983, § 71.

66-4,143 Materiel administrator; submit report; contents.

(1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of the fifth calendar month following the end of a semiannual period submit to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue a report providing the total cost and number of gallons of motor fuels purchased by the State of Nebraska during the preceding month. In providing such information, the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The department shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Source: Laws 1980, LB 722, § 10; Laws 1981, LB 172, § 4; R.S.1943, (1990), § 66-475; Laws 1991, LB 627, § 57; Laws 1994, LB 1160, § 76; Laws 1995, LB 182, § 35; Laws 1998, LB 1161, § 17; Laws 2004, LB 983, § 26.

66-4,144 Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Roads; provide information.

(1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108 for each year during which such bonds are outstanding necessary to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. The department shall adjust the rate as certified by the Director-State Engineer. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the Director-State Engineer certifies to be consistent with the principal and interest requirements of such bonds. Such excise tax rates set pursuant to

this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the Director-State Engineer has received from the State Highway Commission notice of reduced principal and interest requirements for such bonds, in which event the Director-State Engineer shall certify the new rate or rates to the department. The new rate or rates, if any, shall become effective on the first day of the following semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, by June 15 or five days after the adjournment of the regular legislative session each year, whichever is later, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108. The department shall adjust the rate as certified by the Director-State Engineer to be effective from July 1 through June 30 of the succeeding year. The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period. The Director-State Engineer shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The rate of excise tax shall be an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.

(3) The Department of Roads shall provide to the Legislative Fiscal Analyst a copy of the information that is submitted to the Department of Revenue and used to set or adjust the excise tax rate.

(4) If the actual receipts received to date added to any projections or modified projections of deposits to the Highway Cash Fund for the current fiscal year are less than ninety-nine percent or greater than one hundred two percent of the appropriation for the current fiscal year, the Director-State Engineer shall certify to the department the adjustment in rate necessary to meet the appropriations made from the Highway Cash Fund by the Legislature. The department shall adjust the rate as certified by the Director-State Engineer to be effective on the first day of the following semiannual period.

(5) Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Source: Laws 1980, LB 722, § 5; Laws 1981, LB 172, § 5; Laws 1988, LB 632, § 21; R.S.1943, (1990), § 66-476; Laws 1991, LB 255, § 1; Laws 1994, LB 1160, § 77; Laws 1995, LB 182, § 36; Laws 1997, LB 397, § 5; Laws 1998, LB 1161, § 18; Laws 2000, LB 1067, § 10; Laws 2000, LB 1135, § 11; Laws 2004, LB 983, § 27.

66-4,145 Additional excise tax.

In addition to the tax imposed by sections 66-489, 66-489.02, and 66-4,140, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska. The changes made to

this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1980, LB 722, § 14; Laws 1985, LB 112, § 2; Laws 1988, LB 1039, § 8; R.S.1943, (1990), § 66-477; Laws 1991, LB 627, § 58; Laws 1994, LB 1160, § 78; Laws 2004, LB 983, § 28; Laws 2008, LB846, § 13.
Operative date July 1, 2009.

66-4,146 Fuels; use; additional excise tax.

In addition to the tax imposed by sections 66-489, 66-489.02, 66-4,140, and 66-4,145, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels used in the State of Nebraska. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1980, LB 722, § 15; Laws 1985, LB 112, § 3; Laws 1988, LB 1039, § 9; R.S.1943, (1990), § 66-478; Laws 1991, LB 627, § 59; Laws 1994, LB 1160, § 79; Laws 2004, LB 983, § 29; Laws 2008, LB846, § 14.
Operative date July 1, 2009.

66-4,146.01 Floor-stocks tax on agricultural ethyl alcohol; rate; payment.

(1) There is hereby imposed a floor-stocks tax on agricultural ethyl alcohol owned by any person on January 1, 2005, if:

(a) No tax was imposed on such fuel under section 66-489 as the section existed on December 31, 2004; and

(b) Tax would have been imposed on such fuel by section 66-489 as the section existed for periods prior to January 1, 2005.

(2) The rate of the tax imposed by this section shall be the amount of tax imposed under section 66-489 on December 31, 2004.

(3) Any person owning agricultural ethyl alcohol on January 1, 2005, to which the tax imposed by this section applies shall be liable for such tax. The tax imposed by this section shall be paid before July 1, 2005, and shall be paid in such manner as the department prescribes.

Source: Laws 2004, LB 983, § 30.

66-4,147 Receipts from excise tax; disposition.

The receipts from the tax established under sections 66-4,145, 66-4,146, and 66-6,109 shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Allocation Fund.

Source: Laws 1980, LB 722, § 17; Laws 1986, LB 599, § 19; Laws 1989, LB 258, § 7; R.S.1943, (1990), § 66-479; Laws 1991, LB 627, § 60; Laws 1994, LB 1160, § 80; Laws 1995, LB 182, § 37; Laws 2000, LB 1067, § 11; Laws 2004, LB 983, § 31.

66-4,149 Rules and regulations.

The department shall adopt and promulgate rules and regulations, prescribe forms, and perform all duties necessary to carry out its duties relating to the motor fuels tax.

Source: Laws 1980, LB 722, § 13; R.S.1943, (1990), § 66-481; Laws 1991, LB 627, § 61; Laws 2004, LB 983, § 32.

ARTICLE 5

TRANSPORTATION OF FUELS

Section
66-502. Liquid fuel carriers license; issuance.
66-525. Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

66-502 Liquid fuel carriers license; issuance.

The Department of Revenue shall issue a liquid fuel carriers license to the owner and lessee of every car, automobile, truck, trailer, vehicle, or other means of transportation using the highways for the transportation of motor vehicle fuel or diesel fuel into, within, or out of the State of Nebraska. Such licenses shall be issued by the department on receipt of applications from owners and lessees of such vehicles on forms provided by the department. If the applicant is an individual, the application shall include the applicant's social security number. Such licenses may be denied according to the provisions of section 66-729. The liquid fuel carriers license shall be valid until suspended, revoked for cause, or otherwise canceled and shall not be transferable.

Source: Laws 1935, c. 130, § 2, p. 462; C.S.Supp.,1941, § 66-802; R.S. 1943, § 66-502; Laws 1967, c. 397, § 14, p. 1253; Laws 1969, c. 526, § 1, p. 2147; Laws 1991, LB 627, § 63; Laws 1993, LB 440, § 5; Laws 1994, LB 1160, § 82; Laws 1997, LB 752, § 150; Laws 2004, LB 983, § 33.

66-525 Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

The department may require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the twenty-fifth day of each calendar month, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

Source: Laws 1957, c. 284, § 1, p. 1032; Laws 1963, c. 376, § 5, p. 1211; Laws 1967, c. 397, § 9, p. 1251; R.S.1943, (1990), § 66-426.01;

Laws 1991, LB 627, § 26; R.S.Supp.,1992, § 66-4,104; Laws 1994, LB 1160, § 87; Laws 2000, LB 1067, § 12; Laws 2004, LB 983, § 34.

ARTICLE 6

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

(b) DIESEL FUEL TAX

Section
66-650. Repealed. Laws 2004, LB 983, § 71.
66-651. Repealed. Laws 2004, LB 983, § 71.
66-652. Repealed. Laws 2004, LB 983, § 71.
66-653. Repealed. Laws 2004, LB 983, § 71.
66-654. Repealed. Laws 2004, LB 983, § 71.
66-655. Repealed. Laws 2004, LB 983, § 71.
66-656. Repealed. Laws 2004, LB 983, § 71.
66-657. Repealed. Laws 2004, LB 983, § 71.
66-658. Repealed. Laws 2004, LB 983, § 71.
66-659. Repealed. Laws 2004, LB 983, § 71.
66-660. Repealed. Laws 2004, LB 983, § 71.
66-661. Repealed. Laws 2004, LB 983, § 71.
66-662. Repealed. Laws 2004, LB 983, § 71.
66-663. Repealed. Laws 2004, LB 983, § 71.
66-664. Repealed. Laws 2004, LB 983, § 71.
66-665. Repealed. Laws 2004, LB 983, § 71.
66-666. Repealed. Laws 2004, LB 983, § 71.
66-667. Repealed. Laws 2004, LB 983, § 71.
66-668. Repealed. Laws 2004, LB 983, § 71.
66-669. Repealed. Laws 2004, LB 983, § 71.
66-670. Repealed. Laws 2004, LB 983, § 71.
66-671. Repealed. Laws 2004, LB 983, § 71.
66-672. Repealed. Laws 2004, LB 983, § 71.
66-673. Repealed. Laws 2004, LB 983, § 71.
66-674. Repealed. Laws 2004, LB 983, § 71.
66-675. Repealed. Laws 2004, LB 983, § 71.
66-676. Repealed. Laws 2004, LB 983, § 71.
66-677. Repealed. Laws 2004, LB 983, § 71.
66-678. Repealed. Laws 2004, LB 983, § 71.
66-679. Repealed. Laws 2004, LB 983, § 71.
66-680. Repealed. Laws 2004, LB 983, § 71.
66-681. Repealed. Laws 2004, LB 983, § 71.
66-682. Repealed. Laws 2004, LB 983, § 71.
66-683. Repealed. Laws 2004, LB 983, § 71.

(c) ALTERNATIVE FUEL TAX

66-685. Purpose of act.
66-686. Terms, defined.
66-687. Permit required; when.

(d) COMPRESSED FUEL TAX

66-697. Act, how cited.
66-698. Purpose of act.
66-6,100. Compressed fuel, defined.
66-6,103. Motor vehicle, defined.
66-6,106. Retailer's license; application; issuance; security requirements.
66-6,107. Excise tax; amount.
66-6,109. Excise tax; amount.
66-6,109.01. Fuel used for buses; exemption from tax; when; equalization fee; section, how construed; refund.
66-6,109.02. Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

Section
66-6,110. Retailer; return; filing requirements.
66-6,111. Tax computation.

(b) DIESEL FUEL TAX

66-650 Repealed. Laws 2004, LB 983, § 71.

66-651 Repealed. Laws 2004, LB 983, § 71.

66-652 Repealed. Laws 2004, LB 983, § 71.

66-653 Repealed. Laws 2004, LB 983, § 71.

66-654 Repealed. Laws 2004, LB 983, § 71.

66-655 Repealed. Laws 2004, LB 983, § 71.

66-656 Repealed. Laws 2004, LB 983, § 71.

66-657 Repealed. Laws 2004, LB 983, § 71.

66-658 Repealed. Laws 2004, LB 983, § 71.

66-659 Repealed. Laws 2004, LB 983, § 71.

66-660 Repealed. Laws 2004, LB 983, § 71.

66-661 Repealed. Laws 2004, LB 983, § 71.

66-662 Repealed. Laws 2004, LB 983, § 71.

66-663 Repealed. Laws 2004, LB 983, § 71.

66-664 Repealed. Laws 2004, LB 983, § 71.

66-665 Repealed. Laws 2004, LB 983, § 71.

66-666 Repealed. Laws 2004, LB 983, § 71.

66-667 Repealed. Laws 2004, LB 983, § 71.

66-668 Repealed. Laws 2004, LB 983, § 71.

66-669 Repealed. Laws 2004, LB 983, § 71.

66-670 Repealed. Laws 2004, LB 983, § 71.

66-671 Repealed. Laws 2004, LB 983, § 71.

66-672 Repealed. Laws 2004, LB 983, § 71.

66-673 Repealed. Laws 2004, LB 983, § 71.

66-674 Repealed. Laws 2004, LB 983, § 71.

66-675 Repealed. Laws 2004, LB 983, § 71.

66-676 Repealed. Laws 2004, LB 983, § 71.

66-677 Repealed. Laws 2004, LB 983, § 71.

66-678 Repealed. Laws 2004, LB 983, § 71.

66-679 Repealed. Laws 2004, LB 983, § 71.

66-680 Repealed. Laws 2004, LB 983, § 71.

66-681 Repealed. Laws 2004, LB 983, § 71.

66-682 Repealed. Laws 2004, LB 983, § 71.

66-683 Repealed. Laws 2004, LB 983, § 71.

(c) ALTERNATIVE FUEL TAX

66-685 Purpose of act.

The purpose of the Alternative Fuel Tax Act is to supplement the provisions of the tax upon motor fuels by requiring any person who operates on the highways of this state a motor vehicle powered by alternative fuel to purchase an alternative fuel user permit to pay such person's estimated fuel use tax liability.

Source: Laws 1994, LB 1160, § 36; Laws 1995, LB 182, § 45; Laws 2004, LB 983, § 35.

66-686 Terms, defined.

For purposes of the Alternative Fuel Tax Act:

(1) Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws which is used to power a motor vehicle. Alternative fuel does not include motor vehicle fuel as defined in section 66-482, diesel fuel as defined in section 66-482, or compressed fuel as defined in section 66-6,100;

(2) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(3) Motor vehicle has the same definition as in section 60-339; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision.

Source: Laws 1994, LB 1160, § 37; Laws 1995, LB 182, § 46; Laws 2004, LB 983, § 36; Laws 2005, LB 274, § 268.

66-687 Permit required; when.

Every person registering a motor vehicle designed or modified to be propelled in whole by alternative fuel shall obtain from the department an annual alternative fuel user permit for each motor vehicle propelled by alternative fuel. A person shall obtain all required alternative fuel user permits within thirty days of becoming an alternative fuel user.

Source: Laws 1994, LB 1160, § 38; Laws 1995, LB 182, § 47; Laws 2004, LB 983, § 37.

(d) COMPRESSED FUEL TAX

66-697 Act, how cited.

Sections 66-697 to 66-6,116 shall be known and may be cited as the Compressed Fuel Tax Act.

Source: Laws 1995, LB 182, § 1; Laws 1996, LB 1121, § 4; Laws 2008, LB846, § 15.
Operative date July 18, 2008.

66-698 Purpose of act.

The purpose of the Compressed Fuel Tax Act is to supplement the provisions of the tax upon motor fuels by imposing a tax upon all compressed fuel sold or distributed for use in motor vehicles registered or required to be registered for operation upon the highways of this state.

Source: Laws 1995, LB 182, § 2; Laws 2000, LB 1067, § 23; Laws 2004, LB 983, § 38.

66-6,100 Compressed fuel, defined.

Compressed fuel means compressed natural gas, liquefied petroleum gas, liquefied natural gas, butane, and any other type of compressed gas or compressed liquid suitable for fueling a motor vehicle. Compressed fuel does not include motor vehicle fuel as defined in section 66-482 or diesel fuel as defined in section 66-482.

Source: Laws 1995, LB 182, § 4; Laws 2004, LB 983, § 39.

66-6,103 Motor vehicle, defined.

Motor vehicle has the same definition as in section 60-339.

Source: Laws 1995, LB 182, § 7; Laws 2005, LB 274, § 269.

66-6,106 Retailer's license; application; issuance; security requirements.

(1) Before engaging in business as a retailer, a person shall obtain a license to transact such business in the State of Nebraska. An application for a retailer's license shall be made to the department on a form prepared and furnished by the department. The application shall contain such information as the department deems necessary. If the applicant is an individual, the application shall include the applicant's social security number.

(2) After reviewing an application received in proper form, the department may issue to the applicant a retailer's license. The department may refuse to issue such license to any person according to the provisions of section 66-729. Each retailer's license shall be valid until suspended or revoked for cause or otherwise canceled and shall not be transferable.

(3) The department, for the first year of a new license or whenever it deems it necessary to insure compliance with the Compressed Fuel Tax Act, may require any retailer subject to the act to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately two times the estimated average quarterly tax liability payable by such retailer pursuant to the act, unless such retailer is required to file monthly tax returns pursuant to section 66-6,110, in which case the amount of the security shall be approximately three times the estimated monthly tax liability payable by the retailer. The security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. The

security shall run to the department and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such retailer is liable, whether such liability was incurred prior to or after the security is filed.

Source: Laws 1995, LB 182, § 10; Laws 1997, LB 752, § 152; Laws 2004, LB 983, § 40.

66-6,107 Excise tax; amount.

In addition to the tax imposed pursuant to sections 66-6,108, 66-6,109, and 66-6,109.02, an excise tax of seven and one-half cents per gallon or gallon equivalent is levied and imposed on all compressed fuel sold for use in registered motor vehicles. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1995, LB 182, § 11; Laws 2004, LB 983, § 41; Laws 2008, LB846, § 16.
Operative date July 1, 2009.

66-6,109 Excise tax; amount.

In addition to the tax imposed by sections 66-6,107, 66-6,108, and 66-6,109.02, each retailer shall pay an excise tax of two and eight-tenths cents per gallon or gallon equivalent on all compressed fuel sold for use in registered motor vehicles. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1995, LB 182, § 13; Laws 2008, LB846, § 18.
Operative date July 1, 2009.

66-6,109.01 Fuel used for buses; exemption from tax; when; equalization fee; section, how construed; refund.

(1) Compressed fuel shall be exempt from the taxes imposed under the Compressed Fuel Tax Act when the fuel is used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(2) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in the act, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(3) Nothing in this section shall be construed as permitting compressed fuel to be sold tax exempt. The department shall refund tax paid on compressed fuel used in buses deemed exempt by this section.

Source: Laws 1996, LB 1121, § 5; Laws 2004, LB 983, § 42.

66-6,109.02 Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-6,110, the retailer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline calculated pursuant to section 66-489.02

for the gallons of the compressed fuel as shown by the return, except that there shall be no tax on the compressed fuel reported if it is otherwise exempted by the Compressed Fuel Tax Act.

(2) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Roads;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 17.
Operative date July 18, 2008.

66-6,110 Retailer; return; filing requirements.

Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return in such format as prescribed by the department on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if transmitted or postmarked before midnight of the final filing date.

Source: Laws 1995, LB 182, § 14; Laws 2000, LB 1067, § 24; Laws 2001, LB 168, § 11; Laws 2004, LB 983, § 43.

66-6,111 Tax computation.

The taxes imposed by sections 66-6,107, 66-6,108, and 66-6,109 shall be computed by each retailer by multiplying the tax rate established in sections 66-6,107, 66-6,108, and 66-6,109 by the number of gallons or gallon equivalents of compressed fuel sold for use in registered motor vehicles.

Source: Laws 1995, LB 182, § 15; Laws 2004, LB 983, § 44; Laws 2008, LB846, § 19.
Operative date July 18, 2008.

ARTICLE 7
MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section
66-712. Terms, defined.
66-713. Retailer; license required; when; records.
66-717. Invoice or billing documents; requirements; licensed producer, supplier, distributor, wholesaler, and importer; statement authorized.
66-718. Report, return, or other statement; department; powers; electronic filing.
66-720. License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.
66-722. Returns; review by department; deficiency determination; procedure.
66-723. Corporate officer or employee; personal liability; collection of taxes; procedures; hearing.
66-726. Refund; when allowed; procedures.
66-727. Prohibited acts; criminal penalties.
66-733. Producers, suppliers, distributors, wholesalers, and importers; cash bond required; funds created; investment.
66-734. Cash bond; contribution; how collected.
66-735. Trust fund; use; delinquency; certification; State Treasurer; duties.
66-736. Cash bond; contribution; refund; return of trust fund.
66-737. Committee to oversee trust fund; members; terms; powers and duties.
66-741. Federally recognized Indian tribe; agreement with state; authorized.

66-712 Terms, defined.

For purposes of Chapter 66, articles 4, 5, 6, and 14, and sections 66-712 to 66-737:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, except that for purposes of enforcement of Chapter 66, article 14, department means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the provisions of Chapter 66, articles 4, 5, and 6 and sections 66-712 to 66-737, except that for purposes of enforcement of Chapter 66, article 14, motor fuel laws means the provisions of Chapter 66, article 14, and sections 66-712 to 66-737; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-737, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1991, LB 627, § 107; Laws 1993, LB 121, § 398; Laws 1994, LB 1160, § 95; Laws 1995, LB 182, § 52; Laws 1996, LB 1218, § 19; Laws 2004, LB 983, § 45.

66-713 Retailer; license required; when; records.

(1) Any person operating as a retailer of motor vehicle fuel or diesel fuel in this state shall obtain a license from the department. A separate license shall be issued for each retail location operated by such person.

(2) Every retailer shall keep a complete and accurate record of all motor fuels, to be based on gross gallons, received, purchased, or obtained, which record shows the name and address of the person from whom each transfer or purchase of motor fuels was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and the total amount of motor fuels sold at retail during the month.

(3) The records shall also include all exempt sales of motor fuels, the date of sale, the quantity sold, and the identity of the purchaser.

(4) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years.

Source: Laws 1991, LB 627, § 108; Laws 1994, LB 1160, § 96; Laws 1998, LB 1161, § 23; Laws 2004, LB 983, § 46.

66-717 Invoice or billing documents; requirements; licensed producer, supplier, distributor, wholesaler, and importer; statement authorized.

(1) All producers, suppliers, distributors, wholesalers, and importers and other persons selling motor fuel for resale that have been taxed under the motor fuel laws shall include on all invoices or other billing documents for the motor fuel the amount of the fuel tax or a statement that the Nebraska fuel taxes have been paid on the motor fuel.

(2) If the invoice or other billing document does not contain the amount of the tax or the statement that the Nebraska fuel taxes have been paid, the motor fuel shall be presumed to be untaxed and the purchaser shall be liable for the tax on such fuel.

(3) Any licensed producer, supplier, distributor, wholesaler, or importer who has recorded his or her liability for the tax on the motor fuel with the intent to remit the tax on the next return that is due may make the statement required by this section.

Source: Laws 1991, LB 627, § 111; Laws 1994, LB 1160, § 99; Laws 2004, LB 983, § 47.

66-718 Report, return, or other statement; department; powers; electronic filing.

(1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws.

(2) The Tax Commissioner may require any of the reports, returns, or other filings due from any motor fuels licensees to be filed electronically.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

(5) For purposes of the electronic funds transfer requirements contained in section 77-1784, motor vehicle fuel tax, diesel fuel tax, compressed fuel tax, and

all other tax programs administered by the Motor Fuel Tax Enforcement and Collection Division shall be considered as comprising one tax program.

Source: Laws 1991, LB 627, § 112; Laws 1997, LB 720, § 19; Laws 1998, LB 1161, § 24; Laws 2000, LB 1067, § 26; Laws 2004, LB 983, § 48.

66-720 License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.

(1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

(a) Cancellation of security;

(b) Failure to provide additional security as required;

(c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;

(d) Failure to pay taxes due within the time provided;

(e) Filing of any false report, return, statement, or affidavit, knowing it to be false;

(f) Delivering motor fuel to a Nebraska destination if Nebraska is not listed as the destination state on the original bill of sale, bill of lading, or manifest except as authorized under section 66-503;

(g) Failure to remain in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(h) Failure to remain in compliance with requirements of the Department of Agriculture regarding weights and measures;

(i) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-495.01;

(j) No longer being eligible to obtain a license or permit; or

(k) Any other violation of the motor fuel laws or the rules and regulations.

(2) The department shall mail notice of suspension of any license or permit.

(3) The licensee or permitholder may, within sixty days after the mailing of the notice of such suspension, petition the Department of Revenue in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within ten days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or canceling such license or permit.

(4) If a petition is not filed within the sixty-day period, the suspended license or permit shall be canceled by the department at the expiration of the period.

(5) The department shall not issue a new permit or license to the same person for one year from the date of cancellation. Any reissuance of a permit or license to the same person within three years from the date of cancellation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(6) Suspension or cancellation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

Source: Laws 1991, LB 627, § 115; Laws 1992, LB 1013, § 15; Laws 1993, LB 440, § 12; Laws 1994, LB 1160, § 100; Laws 1996, LB 1121, § 7; Laws 2004, LB 983, § 49; Laws 2008, LB914, § 2. Operative date January 1, 2009.

66-722 Returns; review by department; deficiency determination; procedure.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties sixty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such sixty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the twenty-fifth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 1991, LB 627, § 117; Laws 2000, LB 1067, § 28; Laws 2004, LB 983, § 50; Laws 2008, LB914, § 3. Operative date January 1, 2009.

Cross References

Administrative Procedure Act, see section 84-920.

66-723 Corporate officer or employee; personal liability; collection of taxes; procedures; hearing.

(1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to

perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-721.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the motor fuel laws which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1991, LB 627, § 118; Laws 1993, LB 440, § 13; Laws 1996, LB 1041, § 2; Laws 2000, LB 1067, § 29; Laws 2008, LB914, § 4. Operative date January 1, 2009.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-726 Refund; when allowed; procedures.

(1) The department may adjust all errors in payment, refund tax paid on motor fuel destroyed, refund tax overpaid on motor fuel, and refund an amount equal to the per-gallon tax imposed by this state on sales of motor fuel on which tax was paid in this state but which was sold in a state other than Nebraska.

(2)(a) Motor fuels shall be exempt from the taxes imposed by sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when the fuels are used for agricultural, quarrying, industrial, or other nonhighway use.

(b) The department shall refund tax paid on motor fuels used for an exempt purpose. The purchaser of tax-paid motor fuels used for an exempt purpose shall file a claim for refund with the department on forms prescribed by the department and shall provide such documentation and maintain such records as the department reasonably requires to substantiate that the fuels were used for exempt purposes.

(c) The refund claim shall include: (i) The name of claimant; (ii) the make, horsepower, and other mechanical description of machinery in which the motor fuels were used; (iii) a statement as to the source or place of business where such motor fuels, used solely for agricultural, quarrying, industrial, or other nonhighway uses, were acquired; that no part of such motor fuels were used in propelling licensed motor vehicles; and that the motor fuels for which refund of the tax thereon is claimed were used solely for agricultural, quarrying, industrial, or other nonhighway uses; and (iv) any other information deemed necessary by the department.

(d) The department shall deduct (i) from each claim for refund of tax paid on purchases of motor vehicle fuels under this subsection two and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and three and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, of the tax paid and (ii) from each claim for refund of tax paid on purchases of diesel fuel under this subsection one cent per gallon of the tax paid.

(e) The department shall transmit monthly to the State Treasurer a report of the number of gallons of motor vehicle fuel for which refunds have been approved under this subsection. Through December 31, 2004, and commencing January 1, 2010, the State Treasurer shall thereupon transfer from the Highway Trust Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund, and commencing January 1, 2005, through December 31, 2009, the State Treasurer shall thereupon transfer from the Highway Trust Fund (a) to the Ethanol Production Incentive Cash Fund one and one-quarter cents per gallon approved for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund.

(3) No refund shall be allowed unless a claim is filed setting forth the circumstances by reason of which refund should be allowed. Such claim shall be filed with the department within three years from the date of the payment of the tax.

(4) In each calendar year, no claim for refund related to motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel can be for an amount less than twenty-five dollars.

(5) The department shall administer and enforce this section. The department may call to its aid when necessary any member of the Nebraska State Patrol, any police officer, any county attorney, or the Attorney General. The employees of the department are empowered to stop and inspect motor vehicles, to inspect premises, and temporarily to impound motor vehicles or motor fuels when necessary to administer this section.

(6) The department may adopt and promulgate such rules and regulations as are necessary for the prompt and effective enforcement of this section.

(7) Any claimant for refund of motor fuels tax under this section who is unable to produce the original copy of any invoice to substantiate the refund for

the reason that the same has been lost, mutilated, or destroyed may make proof of his or her claim by affidavit and such other evidence as may be required by the department, and if such claim is verified by investigation, such claim may be allowed.

(8) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 1991, LB 627, § 121; Laws 1992, LB 1013, § 16; Laws 1994, LB 1160, § 101; Laws 1995, LB 182, § 54; Laws 2004, LB 983, § 51; Laws 2004, LB 1065, § 4; Laws 2008, LB846, § 20. Operative date July 18, 2008.

66-727 Prohibited acts; criminal penalties.

(1) It shall be unlawful for any person to:

(a) Knowingly import, distribute, sell, produce, refine, compound, blend, or use any motor vehicle fuel, diesel fuel, or compressed fuel in the State of Nebraska without remitting the full amount of tax imposed by the provisions of the motor fuel laws;

(b) Refuse or knowingly and intentionally fail to make and file any return, report, or statement required by the motor fuel laws in the manner or within the time required;

(c) Knowingly and with intent to evade or to aid or abet any other person in the evasion of the tax imposed by the motor fuel laws (i) make any false or incomplete report, return, or statement, (ii) conceal any material fact in any record, report, return, or affidavit provided for in the motor fuel laws, (iii) improperly claim any exemption from tax imposed by the motor fuel laws, or (iv) create or submit any false documentation purporting to show that tax-free fuel has been purchased or sold tax paid or that tax-paid fuel has been used for a tax-exempt purpose;

(d) Knowingly conduct any activities requiring a license under the provisions of the Petroleum Release Remedial Action Act, the Compressed Fuel Tax Act, and Chapter 66, articles 4, 5, and 7, without a license or after a license has been surrendered, suspended, or canceled;

(e) Knowingly conduct any activities requiring a permit under the provisions of the motor fuel laws without such permit or after such permit has been surrendered, suspended, or canceled;

(f) Knowingly assign or attempt to assign a license or permit;

(g) Knowingly fail to keep and maintain books and records required by the motor fuel laws;

(h) Knowingly fail or refuse to pay a fuel tax when due;

(i) Knowingly make any false statement in connection with an application for the refund of any money or tax;

(j) Fail or refuse to produce for inspection any license or permit issued under the motor fuel laws; or

(k) Knowingly violate any of the motor fuel laws or any rule or regulation under the motor fuel laws.

(2) Any person who violates subdivision (1)(b), (f), (h), or (k) of this section shall be guilty of a Class IV felony. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(3) Any person who violates subdivision (1)(a), (c), (d), (g), or (i) of this section shall be guilty of a Class IV felony if the amount of tax involved is less than five thousand dollars and a Class III felony if the amount of tax is five thousand dollars or more. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(4) Any person who violates subdivision (1)(e) or (j) of this section shall be guilty of a separate Class IV misdemeanor for each day of operation.

Source: Laws 1991, LB 627, § 122; Laws 1993, LB 440, § 14; Laws 1994, LB 1160, § 102; Laws 1995, LB 182, § 55; Laws 1996, LB 1121, § 8; Laws 1996, LB 1218, § 20; Laws 2000, LB 1067, § 30; Laws 2004, LB 983, § 52.

Cross References

Compressed Fuel Tax Act, see section 66-697.
Petroleum Release Remedial Action Act, see section 66-1501.

66-733 Producers, suppliers, distributors, wholesalers, and importers; cash bond required; funds created; investment.

(1) All motor fuel producers, suppliers, distributors, wholesalers, and importers licensed under section 3-149 or 66-484 and all retailers licensed under section 66-6,106 shall jointly furnish a cash bond to the state to secure the payment of all fuel taxes.

(2) The cash bond shall be held by the State Treasurer in a motor fuel trust fund, which fund is hereby created, for the benefit of producers, suppliers, distributors, wholesalers, importers, and retailers. No producer, supplier, distributor, wholesaler, importer, or retailer shall have any claim or rights against the fund as a separate person. Any money in the diesel fuel importers trust fund and the motor vehicle fuel importers trust fund on March 30, 1995, shall be transferred to the motor fuel trust fund on such date.

(3) All funds in the 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 and may be pooled with other funds for the purposes of section 72-1267.

Source: Laws 1985, LB 273, § 25; R.S.1943, (1990), § 66-610.01; Laws 1991, LB 627, § 128; Laws 1994, LB 1066, § 52; Laws 1994, LB 1160, § 104; Laws 1995, LB 182, § 56; Laws 2004, LB 983, § 53.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-734 Cash bond; contribution; how collected.

(1) The contribution for the cash bond required in section 66-733 shall be collected by the department each tax period with the tax return for all such periods beginning on and after September 30, 1985. The amount due shall be deemed to be tax for the purpose of collection or refund.

(2) The amount collected each tax period from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall be the portion

of the commission allowed which equals one-fourth of one percent of the total tax due.

(3) The contributions from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall continue to be collected until the amount in the trust fund, including interest earned, is equal to one percent of the total motor fuel tax collected during the preceding year. The contributions shall resume whenever the amount is less than one-half of one percent of the motor fuel tax collected during the preceding year.

(4) The department shall notify the producers, suppliers, distributors, wholesalers, importers, and retailers whenever it is necessary for the contributions to resume. The contributions shall begin with the first tax return that is due at least thirty days after notice is provided by the department.

Source: Laws 1985, LB 273, § 26; R.S.1943, (1990), § 66-610.02; Laws 1991, LB 627, § 129; Laws 1994, LB 1160, § 105; Laws 1995, LB 182, § 57; Laws 2004, LB 983, § 54.

66-735 Trust fund; use; delinquency; certification; State Treasurer; duties.

(1) Money in the trust fund created pursuant to section 66-733 shall be used solely for the purpose of preventing a loss to the state for fuel taxes that are not paid.

(2) Whenever the department determines that fuel tax has been delinquent for ninety days, it shall certify the delinquent amount of tax and the interest due thereon to the State Treasurer. The certification shall include the specific fund into which the tax would have been deposited if received.

(3) Upon receipt of the certification, the State Treasurer shall transfer the amount to the fund identified.

(4) Such transfer shall not affect the liability of the producer, supplier, distributor, wholesaler, importer, or retailer to the state.

Source: Laws 1985, LB 273, § 27; Laws 1988, LB 1039, § 10; R.S.1943, (1990), § 66-610.03; Laws 1991, LB 627, § 130; Laws 1994, LB 1160, § 106; Laws 1995, LB 182, § 58; Laws 2004, LB 983, § 55.

66-736 Cash bond; contribution; refund; return of trust fund.

(1) A refund of the contributions made pursuant to section 66-734 shall be made only when there is a refund of the tax on which the contribution is calculated or when there was an error in the calculation.

(2) If the cash bond is abolished, the money in the trust fund shall be returned to the producers, suppliers, distributors, wholesalers, importers, and retailers who are then licensed by increasing the commission by the amount specified for the contributions. The reduction in collections because of the additional amount allowed to the producers, suppliers, distributors, wholesalers, importers, and retailers shall be replaced by a transfer from the cash bond to the appropriate highway fund.

Source: Laws 1985, LB 273, § 28; R.S.1943, (1990), § 66-610.04; Laws 1991, LB 627, § 131; Laws 1994, LB 1160, § 107; Laws 1995, LB 182, § 59; Laws 2004, LB 983, § 56.

66-737 Committee to oversee trust fund; members; terms; powers and duties.

(1) The department shall appoint a committee to oversee the operation of the trust fund created in section 66-733. The committee shall consist of seven members. Two members shall be diesel fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be motor vehicle fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be compressed fuel retailers, and one member shall be selected at large. Members shall be appointed for terms of four years.

(2) The committee shall have access to information concerning any transfers occurring from the trust fund, the collection efforts of the department to collect from the person owing the tax, and the management of the trust fund.

(3) Members of the committee shall be considered employees of the department solely for the purpose of the disclosure of confidential information and the imposition of penalties for the unauthorized disclosure of such information.

(4) The committee may receive confidential information only for the purpose of determining the effectiveness of the department in collecting the amounts transferred from the cash bond collected pursuant to section 66-734.

Source: Laws 1985, LB 273, § 30; R.S.1943, (1990), § 66-610.06; Laws 1991, LB 627, § 132; Laws 1994, LB 1160, § 108; Laws 1995, LB 182, § 60; Laws 2004, LB 983, § 57.

66-741 Federally recognized Indian tribe; agreement with state; authorized.

(1) The Governor or his or her designated representative may negotiate an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation or on land held in trust for a Nebraska-based federally recognized Indian tribe. The agreement shall specify:

(a) Its duration;

(b) Its purpose;

(c) Provisions for administering, collecting, and enforcing the agreement;

(d) Remittance of taxes collected;

(e) The division of the proceeds of the tax between the parties;

(f) The method to be employed in accomplishing the partial or complete termination of the agreement; and

(g) Any other necessary and proper matters.

(2) The agreement shall require that the state motor fuel tax and any tribal motor fuel tax be identical in rate and base of transactions.

(3) An Indian tribe accepting an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

Source: Laws 2001, LB 172, § 11; Laws 2007, LB537, § 1.

ARTICLE 10

ENERGY CONSERVATION

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

Section
66-1013. Legislative findings.
66-1014. Terms, defined.
66-1015. Energy Conservation Improvement Fund; created; investment; department; duties.
66-1016. Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.
66-1017. Contracts authorized.
66-1018. Report.
66-1019. Rules and regulations.

(g) ENERGY FINANCING CONTRACTS

66-1065. Energy financing contract; contents; energy service company; bond requirements.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

66-1012 Act, how cited.

Sections 66-1012 to 66-1019 shall be known and may be cited as the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 1.
Operative date January 1, 2009.

66-1013 Legislative findings.

The Legislature finds and declares that:

(1) Many residents of this state find it difficult to pay for the cost of heating, cooling, and lighting their homes;

(2) Energy conservation helps to maintain affordable energy bills, reduces the amount of money spent on imported energy sources, lessens the need for new power plants and other energy infrastructure, and helps mitigate the impact of energy generation on the environment; and

(3) It serves a public purpose to provide funding to eligible persons for eligible energy conservation improvements in accordance with the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 2.
Operative date January 1, 2009.

66-1014 Terms, defined.

For purposes of the Low-Income Home Energy Conservation Act:

(1) Department means the Department of Revenue;

(2) Eligible energy conservation grant means a grant paid to an eligible person for an eligible energy conservation improvement;

(3) Eligible energy conservation improvement means a device, a method, equipment, or material that reduces consumption of or increases efficiency in the use of electricity or natural gas for a residence owned by an eligible person, including, but not limited to, insulation and ventilation, storm or thermal doors or windows, awnings, caulking and weatherstripping, furnace efficiency modifications, thermostat or lighting controls, replacement or modification of lighting fixtures or bulbs to increase the energy efficiency of the home's lighting system, and systems to turn off or vary the delivery of energy;

(4) Eligible entity means an entity providing matching funds pursuant to section 66-1015 and which is a public power district organized under Chapter 70, article 6, a rural public power district organized under Chapter 70, article 8, an electric cooperative corporation organized under the Electric Cooperative Corporation Act, a nonprofit corporation organized for the purpose of furnishing electric service, a joint entity organized under the Interlocal Cooperation Act, or a municipality; and

(5) Eligible person means any resident of Nebraska who owns his or her residence and whose household income is at or below one hundred fifty percent of the federal poverty level, as determined in accordance with the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 3.
Operative date January 1, 2009.

Cross References

Electric Cooperative Corporation Act, see section 70-701.
Interlocal Cooperation Act, see section 13-801.

66-1015 Energy Conservation Improvement Fund; created; investment; department; duties.

(1) The Energy Conservation Improvement Fund is created. There shall be a separate subaccount within the fund for each eligible entity remitting matching funds and administering a program of eligible energy conservation improvements. The fund shall be administered by the department. Funds shall be remitted by the department to the State Treasurer for deposit in the proper subaccount of the fund from state sales taxes and matching funds remitted by the eligible entity as provided in subsection (2) of this section.

(2) Commencing July 1, 2009, any eligible entity may designate state sales taxes collected from customers for deposit in the subaccount of the fund for that eligible entity. Any such designation shall be accompanied by an equal amount of matching funds from the eligible entity. The total amount designated in any calendar year shall not exceed five percent of the total state sales tax collected in the prior calendar year.

(3) The department shall adopt a form to (a) designate part of the state sales tax to be remitted for administering a program of eligible energy conservation improvements and (b) remit the matching funds.

(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 2008, LB1001, § 4.
Operative date January 1, 2009.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1016 Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.

(1) An eligible entity that has remitted matching funds to the department as provided in section 66-1015 may establish and administer a program of eligible energy conservation grants.

(2) The program shall provide for an eligible energy conservation grant from the Energy Conservation Improvement Fund to an eligible person for installing an eligible energy conservation improvement upon certification by the eligible entity that it has approved an eligible energy conservation improvement for the residence of the eligible person. The eligible entity shall verify the purchase and installation of the eligible energy conservation improvement at the eligible person's residence.

(3) The eligible entity may require the eligible person to pay for a share of the cost of the eligible energy conservation improvement, not to exceed twenty percent of the total cost. The share of the cost to be paid by the eligible person may be recovered by the eligible entity in monthly installments after completion of the eligible energy conservation improvement by adding an amount to the eligible person's electrical bill.

(4) The eligible entity shall certify to the department the amount of money to be distributed from the applicable subaccount of the Energy Conservation Improvement Fund for payments of the energy conservation grants approved in subsection (2) of this section. Requests for distribution may be filed no more frequently than monthly. The department shall distribute money only to the eligible entity.

Source: Laws 2008, LB1001, § 5.
Operative date January 1, 2009.

66-1017 Contracts authorized.

An eligible entity may contract with any qualified person, agency, or business entity to administer a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act or to make eligibility determinations for eligible energy conservation grants.

Source: Laws 2008, LB1001, § 6.
Operative date January 1, 2009.

66-1018 Report.

Beginning April 1, 2009, and annually on or before April 1 thereafter, each eligible entity administering a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act shall submit to the department a report describing each eligible energy conservation grant made by the eligible entity during the preceding calendar year and the eligible energy conservation improvement for which each such grant was made.

Source: Laws 2008, LB1001, § 7.
Operative date January 1, 2009.

66-1019 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out its duties under the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 8.
Operative date January 1, 2009.

(g) ENERGY FINANCING CONTRACTS

66-1065 Energy financing contract; contents; energy service company; bond requirements.

(1) Any energy financing contract entered into by a governmental unit shall:

(a) Detail the responsibilities of a Nebraska-licensed professional engineer in the design, installation, and commissioning of the energy conservation measures selected by the governmental unit. Any design shall conform to all statutes of the State of Nebraska pertaining to engineering design and public health, safety, and welfare;

(b) Set forth the calculated energy cost savings during the contract period attributable to the energy conservation measures to be installed by the energy service company. Operational savings may be included in the total savings amount, not guaranteed, but approved by the governmental unit;

(c) Estimate the useful life of each of the selected energy conservation measures;

(d) Provide that, except for obligations on termination of the contract prior to its expiration, payments on the contract are to be made over time, within a period not to exceed thirty years after the date of the installation of the energy conservation measures provided for under the contract;

(e) Provide that the calculated savings for each year of the contract period will meet or exceed all payments to be made during each year of the contract;

(f) Disclose the effective interest rate being charged by the energy service company; and

(g) In the case of a guaranteed savings contract, set forth the method by which savings will be calculated and a method of resolving any dispute in the amount of the savings. The energy service company shall have total responsibility for the savings guarantee for each guaranteed savings contract.

(2) An energy service company entering into an energy financing contract shall provide a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the contract to assure the company's faithful performance. The energy service company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract. For purposes of this section, total cost means all costs associated with the design, installation, modification, commissioning, maintenance, and financing of all energy conservation measures contemplated under the contract.

Source: Laws 1998, LB 1129, § 12; Laws 2008, LB747, § 1.
Effective date July 18, 2008.

ARTICLE 13

ETHANOL

Section

66-1330 Act, how cited.

Sections 66-1330 to 66-1348 shall be known and may be cited as the Ethanol Development Act.

Source: Laws 1986, LB 1230, § 1; Laws 1987, LB 279, § 1; Laws 1989, LB 587, § 1; Laws 1992, LB 754, § 1; R.S.Supp.,1992, § 66-1301; Laws 1993, LB 364, § 1; Laws 1995, LB 377, § 1; Laws 2001, LB 536, § 1; Laws 2004, LB 479, § 2.

66-1333 Terms, defined.

For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board means the Nebraska Ethanol Board;

(3) Commercial channels means the sale of corn or grain sorghum for any use, to any commercial buyer, dealer, processor, cooperative, or person, public or private, who resells any corn or grain sorghum or product produced from corn or grain sorghum;

(4) Corn means corn as defined in section 2-3610;

(5) Delivered or delivery means receiving corn or grain sorghum for any use other than storage;

(6) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring corn or grain sorghum in Nebraska, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the corn or grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(7) Grain means wheat, corn, and grain sorghum;

(8) Grower means any landowner personally engaged in growing corn or grain sorghum, a tenant of the landowner personally engaged in growing corn or grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;

(9) Name plate design capacity means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year;

(10) Related parties means any two or more individuals, firms, partnerships, limited liability companies, companies, agencies, associations, or corporations which are members of the same unitary group or are any persons who are considered to be related persons under the Internal Revenue Code; and

(11) Sale includes any pledge or mortgage of corn or grain sorghum after harvest to any person, public or private.

Source: Laws 1986, LB 1230, § 3; Laws 1989, LB 587, § 3; Laws 1992, LB 754, § 2; R.S.Supp.,1992, § 66-1303; Laws 1993, LB 364, § 4; Laws 1995, LB 377, § 6; Laws 2004, LB 479, § 4.

66-1334 Agricultural Alcohol Fuel Tax Fund; created; use; investment.

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. No part of the funds deposited in the fund or of federal funds or other funds solicited in conjunction with research or demonstration programs shall lapse to the General Fund. In addition to such unexpended balance appropriation, there is hereby appropriated such amounts as are deposited in the Agricultural Alcohol Fuel Tax Fund in each year. The fund shall be administered by 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.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

(c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

(d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;

(e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

(g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for existing ethanol program commitments consummated pursuant to the law in existence prior to September 1, 1993, and solicitation of federal funds.

Source: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1344 Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.

(1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

(c) Not more than fifteen million six hundred twenty-five thousand gallons of ethanol produced annually at an ethanol facility shall be eligible for credits under this subsection. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the ninety-six-consecutive-month period or forty-eight-consecutive-month period set forth in this subsection shall be eligible for credits under this subsection.

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a nonrefundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be provided by the ethanol facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and imposition of assessments made by the Department of Revenue relating to excess credits claimed by ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the

department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, or the Nebraska Advantage Act.

Source: Laws 1990, LB 1124, § 1; Laws 1992, LB 754, § 8; R.S.Supp.,1992, § 66-1326; Laws 1993, LB 364, § 15; Laws 1994, LB 961, § 1; Laws 1995, LB 377, § 7; Laws 1996, LB 1121, § 13; Laws 1999, LB 605, § 1; Laws 2001, LB 536, § 2; Laws 2004, LB 479, § 5; Laws 2004, LB 1065, § 5; Laws 2005, LB 312, § 2; Laws 2008, LB914, § 5.
Operative date January 1, 2009.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Act, see section 77-5701.

66-1344.01 Ethanol tax credits; agreement required; contents.

The Tax Commissioner and the producer eligible to receive credits under subsection (2) of section 66-1344 shall enter into a written agreement. The producer shall agree to produce ethanol at the designated facility and any expansion thereof. The Tax Commissioner, on behalf of the State of Nebraska, shall agree to furnish the producer the tax credits as provided by and limited in section 66-1344 in effect on the date of the agreement. The agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state. No credit shall be given to any producer of ethanol which fails to produce ethanol in Nebraska in compliance with the agreement. The agreement shall include:

(1) The name of the producer;

(2) The address of the ethanol facility;

(3) The date of the initial eligibility of the ethanol facility to receive such credits;

(4) The name plate design capacity of the ethanol facility as of the date of its initial eligibility to receive such credits; and

(5) The name plate design capacity which the facility is intended to have after the completion of any proposed expansion. If no expansion is contemplated at the time of the initial agreement, the agreement may be amended to include any proposed expansion.

The Tax Commissioner shall not accept any applications for new agreements on or after April 16, 2004.

Source: Laws 2001, LB 536, § 7; Laws 2004, LB 479, § 6; Laws 2004, LB 1065, § 6.

66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, and (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

(a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;

(b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;

(c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and

(d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 66-1345.02 for each calendar month of the fiscal year as provided in such subsection.

(4) On December 31, 2012, the State Treasurer shall transfer the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Water Resources Cash Fund.

(5) Whenever the unobligated balance in the Ethanol Production Incentive Cash Fund exceeds twenty million dollars, the Department of Revenue shall notify the Department of Agriculture at which time the Department of Agriculture shall suspend collection of the excise tax levied pursuant to section 66-1345.01. If, after suspension of the collection of such excise tax, the balance of the fund falls below ten million dollars, the Department of Revenue shall notify the Department of Agriculture which shall resume collection of the excise tax.

(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Source: Laws 1992, LB 754, § 9; R.S.Supp.,1992, § 66-1327; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB322, § 13; Laws 2007, LB701, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1345.01 Corn and grain sorghum; excise tax; procedure.

An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. For any sale or delivery of corn or grain sorghum occurring on or after July 1, 1995, and before January 1, 2000, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after January 1, 2000, and before January 1, 2001, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2004, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2004, and before October 1, 2005, the

tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2005, and before October 1, 2012, the tax is seven-eighths cent per bushel for corn and seven-eighths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2012, and before October 1, 2019, the tax is three-fifths cent per bushel for corn and three-fifths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of the excise tax for corn or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1995, LB 377, § 2; Laws 1996, LB 1336, § 7; Laws 1999, LB 605, § 3; Laws 2001, LB 536, § 4; Laws 2004, LB 479, § 8; Laws 2004, LB 1065, § 8; Laws 2005, LB 90, § 18; Laws 2007, LB322, § 14; Laws 2007, LB701, § 28.

66-1345.02 Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.

(1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 66-1345.01 and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundred-

weight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter through December 31, 2012. Beginning January 1, 2013, the department shall remit the excise tax collected to the State Treasurer for credit to the Water Resources Cash Fund within thirty days after the end of each quarter.

(4) The department shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month, with such transfers ending December 31, 2012. Beginning January 1, 2013, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Water Resources Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month. Funds shall be transferred upon the receipt of a report of costs incurred by the Department of Agriculture for the previous calendar month by the budget division of the Department of Administrative Services.

Source: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB322, § 15; Laws 2007, LB701, § 29.

66-1345.04 Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

(1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, $8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

(a) For each of fiscal years 1997-98 and 1998-99, $7,000,000 per fiscal year;

(b) For fiscal year 1999-2000, $6,000,000;

(c) For fiscal year 2000-01, $5,000,000;

(d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, $1,500,000;

(e) For each of fiscal years 2005-06 and 2006-07, $2,500,000 in addition to the amount in subdivision (2)(d) of this section;

(f) For fiscal year 2007-08, $5,500,000;

(g) For each of fiscal years 2008-09 through 2011-12, $2,500,000;

(h) For each of fiscal years 2005-06 and 2006-07, $5,000,000 in addition to the other amounts in this section; and

(i) For fiscal year 2007-08, $15,500,000 in addition to the other amounts in this section.

Source: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, Second Spec. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB322, § 16.

66-1345.05 Funds received by the Department of Revenue; disposition.

Any funds received by the Department of Revenue which result from an ethanol producer claiming excess credit, and any related interest and penalties thereon, shall be remitted to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund.

Source: Laws 2004, LB 479, § 3.

66-1346 Repealed. Laws 2004, LB 479, § 12.

66-1349 Ethanol facility eligible for tax credits or incentives; employ residents.

Any ethanol facility eligible for tax credits or incentives under the Ethanol Development Act, the Employment and Investment Growth Act, or the Nebraska Advantage Rural Development Act shall whenever possible employ workers who are residents of the State of Nebraska.

Source: Laws 1994, LB 961, § 4; Laws 2005, LB 312, § 3.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Ethanol Development Act, see section 66-1330.
Nebraska Advantage Rural Development Act, see section 77-27,187.

66-1350 Repealed. Laws 2004, LB 810, § 1; Laws 2004, LB 940, § 4.

ARTICLE 14
INTERNATIONAL FUEL TAX AGREEMENT ACT

Section
66-1401. Act, how cited.
66-1406.02. License; director; powers.
66-1416. Sections; purpose; terms, defined.
66-1417. Trip permit or payment of motor fuels taxes; required; violation; penalty.
66-1418. Trip permits; issuance; fees.
66-1419. Records; required.

66-1401 Act, how cited.

Sections 66-1401 to 66-1419 shall be known and may be cited as the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 1; Laws 1996, LB 1218, § 22; Laws 1998, LB 1056, § 3; Laws 2004, LB 983, § 60.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-348 to 75-358 or 75-392 to 75-399;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or

refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11.

Cross References

Administrative Procedure Act, see section 84-920.
International Registration Plan Act, see section 60-349.

66-1416 Sections; purpose; terms, defined.

The purpose of sections 66-1416 to 66-1419 is to provide an additional method of collecting motor fuels taxes from interstate motor vehicle operators commensurate with their operations in Nebraska and to permit the department to suspend the collection as to transportation entering Nebraska from any other state when it appears that Nebraska tax revenue and interstate highway transportation moving out of Nebraska will not be unduly prejudiced thereby.

For purposes of such sections, (1) fuel used or consumed in operations includes all fuel placed in the supply tanks and consumed in the engine of a qualified motor vehicle and (2) qualified motor vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property which (a) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, (b) has three or more axles regardless of weight, or (c) is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle or registered gross vehicle weight. Qualified motor vehicle does not include a recreational vehicle.

Source: Laws 2004, LB 983, § 61.

66-1417 Trip permit or payment of motor fuels taxes; required; violation; penalty.

No person shall bring into this state in the fuel supply tanks of a qualified motor vehicle or in any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuels to be used in the operation of the vehicle in this state unless he or she has purchased a trip permit pursuant to section 66-1418 or paid or made arrangements in advance for payment of Nebraska motor fuels taxes on the gallonage consumed in operating the vehicle in this state.

Any person who brings into this state in the fuel supply tanks of a qualified motor vehicle motor fuels in violation of the International Fuel Tax Agreement Act shall be subject to an administrative penalty of one hundred dollars for

each violation to be assessed and collected by the department or another state agency which may be contracted with to act as the department's agent for such purpose. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2004, LB 983, § 62.

66-1418 Trip permits; issuance; fees.

The department shall provide for a trip permit to be issued. Such trip permits shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The carrier enforcement division designated under section 60-1303 shall act as an agent for the department in collecting the fees prescribed in this section and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Such trip permits shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. Trip permits shall be obtained at the first available location, whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this section as reimbursement for the clerical work of issuing the permits.

Source: Laws 2004, LB 983, § 63.

66-1419 Records; required.

Every person operating under sections 66-1416 to 66-1419 shall make and keep for a period of three years, or five years if required reports, returns, or statements are not filed, such records as may reasonably be required by the department for the administration of such sections.

If, in the normal conduct of the business, the required records are maintained and kept at an office outside the State of Nebraska, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the department within this state, but such audit and examination shall be without expense to the State of Nebraska.

Source: Laws 2004, LB 983, § 64.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

Section

66-1501 Act, how cited.

Sections 66-1501 to 66-1532 shall be known and may be cited as the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 1; Laws 1991, LB 409, § 1; Laws 1994, LB 1160, § 116; Laws 1996, LB 1226, § 1; Laws 1998, LB 1161, § 26; Laws 2004, LB 962, § 103.

66-1510 Petroleum, defined.

Petroleum shall mean:

(1) For purposes of the fee provisions of section 66-1521:

(a) Motor vehicle fuel as defined in section 66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in section 66-1333; and

(b) Diesel fuel as defined in section 66-482, including kerosene which has been blended for use as a motor fuel; and

(2) For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of section 66-1521:

(a) The fuels defined in subdivision (1) of this section; and

(b) A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.

Source: Laws 1989, LB 289, § 10; Laws 1994, LB 1160, § 119; Laws 1995, LB 182, § 64; Laws 1997, LB 517, § 1; Laws 2004, LB 983, § 65; Laws 2005, LB 298, § 1.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2012, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal

property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15,190; (h) claims approved by the State Claims Board authorized under section 66-1531; (i) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided no later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and (j) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.

(4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1.
Effective date July 18, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of

claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twenty-fifth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed twenty-eight thousand dollars for each fiscal year. The twenty-eight thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. 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.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1523 Reimbursement; amount; limitations; Prompt Payment Act applicable.

(1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2012, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2012, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent

of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2012.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16; Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9; Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3; Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106; Laws 2008, LB1145, § 2.
Effective date July 18, 2008.

Cross References

Prompt Payment Act, see section 81-2401.

66-1525 Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.

(1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2012, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to

complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an

applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107; Laws 2008, LB1145, § 3.
Effective date July 18, 2008.

Cross References

Environmental Protection Act, see section 81-1532.
Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1529.02 Remedial actions by department; third-party claims; recovery of expenses.

(1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2012, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial

action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4.
Effective date July 18, 2008.

66-1532 Private insurance required; when.

Beginning July 1, 2009, the owner of any new tank at a site where tanks have not been previously located shall be fully insured through private insurance to cover the costs of any remedial action to such tank or the site on which such tank is located after such date.

Source: Laws 2004, LB 962, § 104.

ARTICLE 16

PROPANE EDUCATION AND RESEARCH ACT

Section
66-1618. Council; members; appointment; terms.
66-1619. Council; powers and duties; rules and regulations.

66-1618 Council; members; appointment; terms.

(1) The council shall be appointed by the Governor within sixty days after the date the vote is certified to the Governor pursuant to section 66-1617. The council shall consist of nine members, including four members representing retail marketers, one member representing wholesalers, suppliers, and importers, one member representing manufacturers and distributors of liquefied petroleum gas equipment, one member representing the academic or propane research community, one propane user or consumer, and the State Fire Marshal or his or her designee. Other than the State Fire Marshal or his or her designee and the representatives of the research community and consumers, members shall be full-time employees or owners of businesses in the industry or representatives of agriculture cooperatives. Only one person from any company or an affiliated company may serve on the council at a time. All members shall be Nebraska residents, except that the members representing wholesalers, suppliers, and importers and manufacturers and distributors of liquefied petroleum gas equipment may be residents of other states.

(2) Members of the council shall serve terms of three years, except that, of the initial members, three shall be appointed for terms of one year and three shall be appointed for terms of two years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Members may serve a maximum of two consecutive full terms, except that members filling unexpired

terms may serve a maximum of seven consecutive years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Former members may be reappointed if they have not been members for a period of two years.

Source: Laws 1998, LB 699, § 18; Laws 2008, LB805, § 1.
Effective date July 18, 2008.

66-1619 Council; powers and duties; rules and regulations.

(1) The council shall provide rules and regulations to carry out its responsibilities under the Propane Education and Research Act.

(2) The council may enter into contracts with, use facilities and equipment of, or employ the personnel of a qualified industry organization in carrying out the council's responsibilities under the act.

(3) The council shall protect the handling of council funds through fidelity bonds.

(4) The administrative costs of operating the council shall not exceed twenty percent of the funds collected pursuant to section 66-1621 in any fiscal year.

(5) The council shall operate in accordance with the Open Meetings Act.

(6) At the beginning of each fiscal year, the council shall prepare a budget plan which includes the estimated costs of all programs, projects, and contracts. The council shall provide an opportunity for public comment on the budget. The council shall prepare and make available to the public an annual report detailing the activities of the council in the previous year, those planned for the coming year, and the costs related to the activities.

(7) The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. Copies of the audit shall be provided to the executive director, if one is appointed by the council, to all members of the council, to the Clerk of the Legislature, and to any other member of the industry upon request.

(8) The council shall issue notice of meetings and shall require reports on the activities of the committees and subcommittees and on compliance, violations, and complaints regarding the implementation of the Propane Education and Research Act.

Source: Laws 1998, LB 699, § 19; Laws 2004, LB 821, § 15.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 18

STATE NATURAL GAS REGULATION ACT

Section
66-1801. Act, how cited.
66-1804. Commission; powers; act, how construed.
66-1838. General rate filings; requirements.
66-1840. Commission; investigation expenses; assessment against jurisdictional utility; procedure.
66-1841. Commission; determination of total expenditures; assessment against jurisdictional utilities; limitation.

Section
66-1850. Act; enforcement; prior law; applicability.
66-1852. Extension of natural gas mains or other services; limitations.
66-1858. Metropolitan utilities district; solicitations prohibited; proposals authorized; when.
66-1859. Enlargement or extension of area; applicability of sections.
66-1860. Enlargement or extension of area; considerations.
66-1861. Enlargement or extension of area; rebuttable presumptions.
66-1862. Duplicative gas mains or services; prohibited.
66-1863. Enlargement or extension of area; review by Public Service Commission; when required.
66-1864. Enlargement or extension of area; records; open to public; use.

66-1801 Act, how cited.

Sections 66-1801 to 66-1864 shall be known and may be cited as the State Natural Gas Regulation Act.

Source: Laws 2003, LB 790, § 1; Laws 2006, LB 1249, § 2.

66-1804 Commission; powers; act, how construed.

(1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act.

(2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.

Source: Laws 2003, LB 790, § 4; Laws 2006, LB 1249, § 3.

Cross References

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

66-1838 General rate filings; requirements.

(1) The provisions of this section apply only to general rate filings.

(2) Except as provided in subsection (3) of this section, a jurisdictional utility shall provide written notice to each city that will be affected by a proposed change in rates simultaneously with the filing with the commission of a request for a change in rates pursuant to the State Natural Gas Regulation Act. Such notice shall identify the cities that will be affected by the rate filing. The jurisdictional utility shall also file the information prescribed by the act and rules and regulations for rate changes adopted and promulgated by the commission with each city affected by such proposed rate change in electronic or digital format or, upon request, as paper documents.

(3) A jurisdictional utility may determine not to participate in negotiations with affected cities. Such decision, if indicated by written notice in the initial rate filing to the commission, shall relieve it from the duty of supplying notice to such cities as specified in subsection (2) of this section. The jurisdictional utility shall, not later than fifteen days after the initial filing, inform the commission by written notice of any decision not to participate in negotiations.

(4) Affected cities shall have a period of sixty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an agreed rate change with the jurisdictional utility. A copy of the resolution adopted by each city under this section, notice of the rejection by a city of such a resolution, or written notice by an authorized officer of the city of the city's rejection of negotiations shall be provided to the commission and to the jurisdictional utility within seven days after its adoption.

(5) Any city may, at any time, by resolution adopted by its governing body and filed with the commission, indicate its rejection of participation in any future negotiations pertaining to any rate change whenever the same may be filed. Such resolution shall be treated as a duly filed notice of rejection of participation in negotiations for any rate filing by a jurisdictional utility at any time thereafter. The city filing a resolution pursuant to this subsection shall be bound thereby until such time as a resolution by the governing body of that city revoking its prior rejection of participation is filed with the commission.

(6) If the commission receives resolutions adopted prior to the expiration of the sixty-day period provided for in subsection (4) of this section evidencing the intent to negotiate from cities representing more than fifty percent of the ratepayers within the affected cities, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the rate filing until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first. The commission's certification shall be issued within eight business days after the earlier of (a) receipt of a copy of the resolutions from cities representing fifty percent or more of ratepayers within the affected cities or (b) the end of the sixty-day period provided for in subsection (4) of this section.

(7) When (a) the commission receives notice or has written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities which notice or documents either expressly reject negotiations or reject such a resolution or (b) the commission receives written notice from the jurisdictional utility expressly rejecting negotiations, the rate change review by the commission shall proceed immediately from the date when the commission makes such a determination or receives such notice.

(8) When the sixty-day period provided for in subsection (4) of this section has expired without the receipt by the commission of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities evidencing their intent to negotiate an agreed rate change review by the commission with the jurisdictional utility, the rate change shall proceed immediately from the date when the commission makes such a determination.

(9) If commission certification to pursue negotiations is received, cities adopting resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over such proposed rate change.

(10)(a) The jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates sixty days after the filing with the commission, if the commission certifies the rate filing for negotiations.

(b) If the rate filing is not certified by the commission for negotiations, the jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission.

(11) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed ninety days after the date of the rate filing, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(12) Notwithstanding any other provision of law, any information exchanged between the jurisdictional utility and cities is not a public record within the meaning of sections 84-712 to 84-712.09 and its disclosure to the commission, its staff, the public advocate, or any other person or corporation, for any purpose, is expressly prohibited.

(13) If the cities and the jurisdictional utility reach agreement upon new rates, such agreement shall be reduced to writing, including proposed findings of fact, proposed conclusions of law, and a proposed commission order, and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed rate change enter into an agreement upon new rates and such agreement is filed with and approved by the commission, such rates shall be effective and binding upon all of the jurisdictional utility's ratepayers affected by the rate filing.

(14) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission within a reasonable time.

(15)(a) Except as provided in subdivision (c) of this subsection, if the negotiations fail to result in an agreement upon new rates, the rates requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within two hundred ten days after the date of the expiration of the negotiation period or after the date upon which the jurisdictional utility and the cities file a written agreement that the negotiations have failed and that the rate change review by the commission should proceed as provided in subsection (7) of this section.

(b) Except as provided in subdivision (c) of this subsection, if the filing is not certified for negotiations, the rate requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within one hundred eighty days after the date of the expiration of the sixty-day period provided for in subsection (4) of this section or the date that the commission receives notice or has accumulated written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities, whichever is earlier, if such notice or documents either expressly reject negotiations or reject such a resolution.

(c) The commission may extend the deadlines specified in subdivision (a) or (b) of this subsection by a period not to exceed an additional sixty days upon a finding that additional time is necessary to properly fulfill its responsibilities in the proceeding.

(16) Within thirty days after such changes have been authorized by the commission or become effective, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted and promulgated by the

commission, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

Source: Laws 2003, LB 790, § 38; Laws 2008, LB1072, § 1.
Effective date April 18, 2008.

66-1840 Commission; investigation expenses; assessment against jurisdictional utility; procedure.

(1) Whenever, in order to carry out the duties imposed upon it by law, the commission, in a proceeding upon its own motion, on complaint, or upon an application to it, including rate filings, deems it necessary to investigate any jurisdictional utility or make appraisals of the property of any jurisdictional utility, such utility, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of one hundred dollars, including both direct and indirect expenses incurred by the commission or its staff, shall pay such expenses which shall be assessed against such utility by the commission. Such expenses shall be assessed beginning on the date that the proceeding is filed or beginning three business days after the commission gives the utility notice of the assessment by United States mail, whichever is later. The commission shall give such utility notice and opportunity for a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. At such hearing, the utility may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such utility. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such utility shall be liable for payment of any such expenses incurred by the commission in connection with any proceeding before or within the jurisdiction of any federal regulatory body.

(2) The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the jurisdictional utility investigated or whose property is appraised in such proceeding and shall render a bill therefor, by United States mail, to the jurisdictional utility, either at the conclusion of the investigation or appraisal or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such utility, within fifteen days after the mailing thereof, such utility shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be remitted by the commission to the State Treasurer for credit to the Public Service Commission Regulation Fund for the use of the commission. The total amount, in any one fiscal year, for which any utility shall be assessed under this section shall not exceed the following: (a) For a jurisdictional utility that has not filed an annual report with the commission as provided in the State Natural Gas Regulation Act prior to the beginning of the commission's fiscal year, actual expenses, including direct and indirect expenses, incurred by the commission; and (b) for any other jurisdictional utility, one percent of the utility's gross operating jurisdictional revenue less gas cost derived from intrastate natural gas utility business as reflected in the last annual report filed with the commission pursuant to the act prior to the beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

(3) The commission, in accordance with the procedures prescribed by subsection (2) of this section, may assess against an entity, other than an individual residential ratepayer or individual agricultural ratepayer, that is not subject to assessment pursuant to subsection (1) of this section actual expenses of any services extended, filings processed, or actions certified by the commission for the entity.

Source: Laws 2003, LB 790, § 40; Laws 2006, LB 14, § 1.

66-1841 Commission; determination of total expenditures; assessment against jurisdictional utilities; limitation.

(1) The commission shall determine, within thirty days after each quarter-year for each such quarter-year, the total amount of its expenditures during such period of time. The total amount shall include the salaries of members and employees and all other lawful expenditures of the commission, including all expenditures in connection with investigations or appraisals made under the State Natural Gas Regulation Act, except that there shall not be included in such total amount of expenditures for the purpose of this section the expenditures during such period of time which are otherwise provided for by fees and assessments pursuant to the act.

(2) From the amount determined under subsection (1) of this section, the commission shall deduct (a) all amounts collected under section 66-1840 during such period of time and (b) all other funds collected with regard to jurisdictional utilities.

(3) To the remainder, after making the deductions under subsection (2) of this section, the commission shall add such amount as in its judgment may be required to satisfy any deficiency in the prior assessment period's assessment and to provide for anticipated increases in necessary expenditures for the current assessment period.

(4) The amount determined under subsections (1) through (3) of this section shall be assessed by the commission against all jurisdictional utilities and shall not exceed, during any fiscal year, the greater of one hundred dollars or each utility's proportionate share of the total amount determined under this section based upon meters served by each utility as a proportion of all meters of jurisdictional utilities. Such assessment shall be paid to the commission within fifteen days after the notice of assessment has been mailed to such utilities, which notice of assessment shall constitute demand of payment thereof.

(5) The commission shall remit all money received by or for it for the assessment imposed under this section to the State Treasurer for credit to the Public Service Commission Regulation Fund.

(6)(a) Until June 1, 2007, a jurisdictional utility may recover the amount of any assessments or charges paid to the commission pursuant to this section and section 66-1840 through a special surcharge on ratepayers which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility. The surcharge shall be shown on the statements as a charge for state regulatory assessments. The commission shall permit the utility to include in such surcharge interest upon the amount of the charges and assessments paid to the commission prior to their recovery from ratepayers. Such interest shall be at a rate not to exceed the rate established by section 45-103.

(b) On and after June 1, 2007, the commission by general rule and regulation shall authorize the recovery of the amount of any assessments or charges paid to the commission pursuant to this section and section 66-1840 in a general rate filing or through a special surcharge which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility.

Source: Laws 2003, LB 790, § 41; Laws 2006, LB 14, § 2.

66-1850 Act; enforcement; prior law; applicability.

(1) The State Natural Gas Regulation Act shall not be enforced retroactively before May 31, 2003. A rate filing made pursuant to the provisions of the Municipal Natural Gas Regulation Act prior to such date shall be governed by the act by its terms as in effect on the date of the filing. The enactment into law of the State Natural Gas Regulation Act shall not have the effect of releasing or waiving any right of action by the state, any body corporate and politic, municipal corporation, person, or corporation, pending on May 31, 2003, for any right which may have arisen or accrued under the Municipal Natural Gas Regulation Act.

(2) The rates, terms and conditions of service, and rate areas of a jurisdictional utility in effect on or before May 31, 2003, shall remain in effect after May 31, 2003, and shall be treated as if approved and adopted by the commission pursuant to the State Natural Gas Regulation Act.

(3) The rate areas established pursuant to the Municipal Natural Gas Regulation Act and in effect on May 31, 2003, shall be the initial rate areas in effect under the State Natural Gas Regulation Act. Each jurisdictional utility shall file with the commission a map showing the boundaries of such areas and intervening and adjacent rural territories served within such rate areas.

(4) Except as provided in subsection (5) of this section, following the filing of maps pursuant to subsection (3) of this section, a jurisdictional utility may file with the commission a revised map or maps of any affected rate areas reflecting changes in the boundaries of one or more of the initially filed rate areas and such changes shall become effective upon filing. The commission may, upon its own initiative or upon complaint, review such rate area boundaries and, following notice and hearing, reject or modify proposed changes upon the basis that the proposed changes in boundaries are unduly preferential, unjustly discriminatory, or not just and reasonable.

(5) A rate area containing a city of the primary class shall not be changed to include any other city until after June 1, 2007.

(6) The commission may waive application of the definition of high-volume ratepayer for all ratepayers (a) who prior to April 16, 2004, obtained natural gas service from a jurisdictional utility pursuant to subsection (3) of former section 19-4604, as such section existed prior to May 24, 2003, and (b) whose current consumption of natural gas would qualify such ratepayers to receive natural gas service pursuant to such former section if the section had not been repealed. All ratepayers meeting such criteria may be treated as high-volume ratepayers pursuant to the State Natural Gas Regulation Act. The authority granted pursuant to this subsection and any such waiver shall expire on June 1, 2007.

Source: Laws 2003, LB 790, § 50; Laws 2004, LB 499, § 1.

66-1852 Extension of natural gas mains or other services; limitations.

(1) Except as otherwise expressly authorized in the State Natural Gas Regulation Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

(2) The prohibition in subsection (1) of this section shall not apply in any area in which two or more jurisdictional utilities share authority to provide natural gas within the same territory under franchises issued by the same city.

(3) The prohibition in subsection (1) of this section shall not apply to the extension by a jurisdictional utility of a transmission line connecting to distribution facilities owned or operated by a jurisdictional utility, a city, or a metropolitan utilities district or to serve city-owned electric generating facilities located within the boundaries of a city within which the jurisdictional utility extending the transmission line provides natural gas service to customers.

(4)(a) The prohibition in subsection (1) of this section shall not apply to the extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district.

(b) The extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district shall not constitute an enlargement or expansion of its natural gas service area and shall not be considered part of its natural gas service area.

(c) The extension of a transmission line by a jurisdictional utility as provided in subsection (3) of this section shall not constitute an enlargement or expansion of the jurisdictional utility's natural gas service area and shall not be considered part of its natural gas service area if the transmission line makes its connection to distribution facilities in a county in which the natural gas service area or a portion of the natural gas service area of a metropolitan utilities district is located.

(5) The prohibition in subsection (1) of this section shall not apply to the extension by a city that owns or operates a natural gas utility of a transmission line that connects to its own distribution facilities.

(6) For purposes of this section, a transmission line means a pipeline, other than a gathering pipeline, distribution pipeline, or service line, that transports natural gas.

(7) Nothing in this section shall be construed to authorize a jurisdictional utility to extend a transmission line to a high-volume ratepayer with an existing source and adequate supply of natural gas that is located outside the area in which that jurisdictional utility has existing natural gas utility infrastructure.

Source: Laws 2003, LB 790, § 52; Laws 2006, LB 1249, § 4; Laws 2008, LB1072, § 2.
Effective date April 18, 2008.

66-1858 Metropolitan utilities district; solicitations prohibited; proposals authorized; when.

Whenever any city is furnished natural gas pursuant to a franchise agreement with a jurisdictional utility, a metropolitan utilities district shall not solicit such city to enter into a franchise agreement or promote discontinuance of natural gas service with the utility unless a specific invitation to submit a proposal on

such a franchise has been formally presented to the board of directors of the metropolitan utilities district. For purposes of this section, a specific invitation to submit a proposal means a resolution adopted by the governing body of the city.

Whenever a specific invitation to submit a proposal is received by the board of directors of a metropolitan utilities district, the invitation will be considered by the board at its next regularly scheduled monthly meeting.

Source: Laws 1999, LB 78, § 2; R.S.1943, (2004), § 57-1301; Laws 2006, LB 1249, § 5.

66-1859 Enlargement or extension of area; applicability of sections.

Sections 66-1858 to 66-1864 shall be applicable to a jurisdictional utility only when it is operating in a county in which there is located the natural gas service area, or portion of the natural gas service area, of a metropolitan utilities district and only with regard to matters arising within any such county. Within the limits of a municipal county, the provisions of sections 66-1858 to 66-1864 shall be applicable to the extent and in the manner provided by the Legislature as required by section 13-2802.

Source: Laws 1999, LB 78, § 3; Laws 2001, LB 142, § 52; R.S.1943, (2004), § 57-1302; Laws 2006, LB 1249, § 6.

66-1860 Enlargement or extension of area; considerations.

No jurisdictional utility or metropolitan utilities district may extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services unless it is in the public interest to do so. In determining whether or not an extension or enlargement is in the public interest, the district or the utility shall consider the following:

(1) The economic feasibility of the extension or enlargement;

(2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the jurisdictional utility;

(3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

(4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and

(5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Source: Laws 1999, LB 78, § 4; R.S.1943, (2004), § 57-1303; Laws 2006, LB 1249, § 7.

66-1861 Enlargement or extension of area; rebuttable presumptions.

In determining whether an enlargement or extension of a natural gas service area, natural gas mains, or natural gas services is in the public interest pursuant to section 66-1860, the following shall constitute rebuttable presumptions:

(1) Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;

(2) Any enlargement or extension by a jurisdictional utility within a city other than a city of the metropolitan class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and

(3) Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city other than a city of the metropolitan or primary class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to subsection (2) of section 14-2116 shall, by reason of such exercise, be conclusively determined to be in the public interest.

Source: Laws 1999, LB 78, § 5; R.S.1943, (2004), § 57-1304; Laws 2006, LB 1249, § 8.

66-1862 Duplicative gas mains or services; prohibited.

A metropolitan utilities district or jurisdictional utility shall not extend duplicative or redundant interior natural gas mains or natural gas services into a subdivision, whether residential, commercial, or industrial, which has existing natural gas utility infrastructure or which has contracted for natural gas utility infrastructure with another utility.

Source: Laws 1999, LB 78, § 6; R.S.1943, (2004), § 57-1305; Laws 2006, LB 1249, § 9.

66-1863 Enlargement or extension of area; review by Public Service Commission; when required.

(1) Except as provided in subsections (2) and (3) of this section, no jurisdictional utility or metropolitan utilities district proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services after July 14, 2006, shall undertake or pursue such extension or enlargement until the proposal has been submitted to the commission for its determination that the proposed extension or enlargement is in the public interest. Any proposal for extension or enlargement shall be filed with the commission, and the commission shall promptly make such application public in such manner as the commission deems appropriate. The commission shall schedule the matter for hearing and determination in the county where the extension or enlargement is proposed, and the matter shall be subject to the applicable procedures provided in the State Natural Gas Regulation Act and sections 75-112, 75-129, and 75-134 to 75-136. In making a determination whether a proposed extension or enlargement is in the public interest, the commission shall consider the factors set forth in sections 66-1860 and 66-1861. Ratepayers of the jurisdictional utility or the metropolitan utilities district shall have the right to appear and present testimony before the commission on any matter submitted to the commission under sections 66-1858 to 66-1864 and shall have such testimony considered by the commission in arriving at its determination.

(2) If any metropolitan utilities district proposes to extend or enlarge its system within the corporate boundaries of the city of the metropolitan class it serves or within the boundaries of the extraterritorial zoning jurisdiction of

such city, the metropolitan utilities district may pursue such extension or enlargement without the need for commission approval or the requirement to file and request permission to pursue such extension or enlargement.

(3) If no person or entity has filed with the commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further commission action.

Source: Laws 1999, LB 78, § 7; R.S.1943, (2004), § 57-1306; Laws 2006, LB 1249, § 10.

66-1864 Enlargement or extension of area; records; open to public; use.

All books, records, vouchers, papers, contracts, engineering designs, and any other data of the metropolitan utilities district relating to the public interest of an extension or enlargement of natural gas mains or natural gas services or relating to natural gas service areas, whether in written or electronic form, shall be open and made available for public inspection, investigation, comment, or protest upon reasonable request during business hours, except that such books, records, vouchers, papers, contracts, designs, and other data shall be subject to section 84-712.05. Any books, records, vouchers, papers, contracts, designs, or other data not made available to the metropolitan utilities district or jurisdictional utility with regard to a proceeding before the commission regarding matters arising pursuant to sections 66-1858 to 66-1864 shall not be considered by the commission in determining whether an enlargement or extension is in the public interest.

Source: Laws 1999, LB 78, § 8; R.S.1943, (2004), § 57-1307; Laws 2006, LB 1249, § 11.

CHAPTER 67
PARTNERSHIPS

Article.
1. General Partnerships. Repealed.
2. Nebraska Uniform Limited Partnership Act. 67-201 to 67-232. Repealed.
   Part I—General Provisions. 67-236.
   Part II—Formation; Certificate of Limited Partnership. 67-240, 67-241.
   Part IX—Foreign Limited Partnerships. 67-281, 67-283.
   Part XI—Miscellaneous. 67-294.
3. Uniform Partnership Act.
   Part I—Preliminary Provisions. 67-301 to 67-305. Repealed.
   Part II—Nature of a Partnership. 67-306 to 67-308. Repealed.
   Part III—Relations of Partners to Persons Dealing with the Partnership. 67-309 to 67-317. Repealed.
   Part IV—Relations of Partners to One Another. 67-318 to 67-323. Repealed.
   Part V—Property Rights of a Partner. 67-324 to 67-328. Repealed.
   Part VI—Dissolution and Winding Up. 67-329 to 67-343. Repealed.
   Part VII—Registered Limited Liability Partnership and Foreign Registered Limited Liability Partnership. 67-344 to 67-346. Repealed.
4. Uniform Partnership Act of 1998.
   Part III—Relations of Partners to Persons Dealing with Partnership. 67-415.
   Part X—Limited Liability Partnership. 67-454, 67-456.
   Part XI—Foreign Limited Liability Partnership. 67-458.
   Part XII—Miscellaneous Provisions. 67-464 to 67-466.

ARTICLE 1

GENERAL PARTNERSHIPS

Section
67-101. Repealed. Laws 2008, LB 707, § 5.
67-102. Repealed. Laws 2008, LB 707, § 5.
67-103. Repealed. Laws 2008, LB 707, § 5.
67-104. Repealed. Laws 2008, LB 707, § 5.
67-105. Repealed. Laws 2008, LB 707, § 5.
67-106. Repealed. Laws 2008, LB 707, § 5.

67-101 Repealed. Laws 2008, LB 707, § 5.

67-102 Repealed. Laws 2008, LB 707, § 5.

67-103 Repealed. Laws 2008, LB 707, § 5.

67-104 Repealed. Laws 2008, LB 707, § 5.

67-105 Repealed. Laws 2008, LB 707, § 5.

67-106 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 2

NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

PART I
GENERAL PROVISIONS

PART II
FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

PART IX
FOREIGN LIMITED PARTNERSHIPS

PART XI
MISCELLANEOUS

PART I

GENERAL PROVISIONS

67-236 Specified office and agent.

(a) Each limited partnership shall have and maintain in this state:

(1) An office which may but need not be a place of its business in this state; and

(2) An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.

(b) The agent for service of process may change his, her, or its street address and post office box number, if any, to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the limited partnerships represented by the agent, the street address and post office box number, if any, at which the agent has maintained his, her, or its office as agent for each of such limited partnerships, and the new street address and post office box number, if any, to which the office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office in this state of the agent for service of process for each of the limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the certificate

of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership. Any agent filing a certificate under this section shall promptly, upon the filing, deliver a copy of such certificate to each limited partnership affected thereby.

(c) The agent of one or more limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such limited partnerships as have ratified and approved such substitution and the successor agent's address, as stated in such certificate, shall become the address of each such limited partnership's office in this state. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership.

(d) The agent of one or more limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to the certificate an affidavit of the agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of the agent was sent by certified or registered mail to each limited partnership for which the agent is resigning as agent at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request the agent was appointed for such limited partnership. After receipt of the notice of the resignation of its agent, the limited partnership for which the agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If the limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, the certificate of such limited partnership shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 4; Laws 1989, LB 482, § 9; Laws 1990, LB 1228, § 2; Laws 1993, LB 121, § 402; Laws 2008, LB383, § 1. Effective date July 18, 2008.

PART II

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-240 Certificate of limited partnership; contents; filing.

(a) In order to form a limited partnership, all persons who initially will be the general partners shall execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The address of its office and the name and street address and post office box number, if any, of the agent for service of process required to be maintained by section 67-236;

(3) The name and the business, residence, or mailing address of each general partner; and

(4) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Source: Laws 1981, LB 272, § 8; Laws 1989, LB 482, § 13; Laws 2008, LB383, § 2.
Effective date July 18, 2008.

67-241 Amendments to certificate; restated certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall be executed by any person who will be a general partner upon the effective date of the certificate of amendment and shall set forth:

(1) The name of the limited partnership;

(2) The date of filing the certificate; and

(3) The amendment to the certificate.

(b) Within ninety days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by any person who will be a general partner upon the effective date of the certificate of amendment and by each other general partner designated in the certificate of amendment as a new general partner:

(1) The admission of a new general partner;

(2) A general partner ceases to be a general partner as provided in section 67-255; or

(3) A change in the name of the limited partnership, a change in the address of its registered office, or a change in the name or street address or post office box number, if any, of the registered agent for service of process required to be maintained by section 67-236 which is not reflected in a certificate filed pursuant to section 67-236.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any matter described has changed, making the certificate false in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the ninety-day period specified in subsection (b) of this section.

(f) A certificate of amendment shall be effective at the time of its filing with the Secretary of State or at any later time specified in the certificate of amendment if, in either case, there has been substantial compliance with the requirements of this section.

(g) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

(h) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 67-242:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence, or mailing address of each person winding up the limited partnership affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence, or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment.

Source: Laws 1981, LB 272, § 9; Laws 1989, LB 482, § 14; Laws 2008, LB383, § 3.
Effective date July 18, 2008.

PART IX

FOREIGN LIMITED PARTNERSHIPS

67-281 Foreign limited partnership; registration; contents.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state or country and date of its formation;

(3) A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (4) of this subsection, if an agent has been appointed but the agent's authority has been revoked, or if an agent has been appointed but cannot be found or served with the exercise of reasonable diligence;

(4) The name and street address and post office box number, if any, of any agent for service of process on the foreign limited partnership whom the

foreign limited partnership elects to appoint. The agent must be an individual resident of this state, a domestic corporation, a foreign corporation having a place of business in and authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company having a place of business in and authorized to do business in this state;

(5) The address of the office required to be maintained in the state or country of its organization by the laws of that state or country or, if not so required, of the principal office of the foreign limited partnership; and

(6) The name and business, residence, or mailing address of each of the general partners.

(b) A foreign limited partnership or a partnership, limited liability company, or corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than this state shall not be deemed to be doing business in this state solely by reason of its being a partner in a domestic limited partnership.

Source: Laws 1981, LB 272, § 49; Laws 1983, LB 447, § 80; Laws 1989, LB 482, § 52; Laws 1993, LB 121, § 406; Laws 2008, LB383, § 4. Effective date July 18, 2008.

67-283 Foreign limited partnership; name; agent.

(a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, the name of any domestic or foreign corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation, limited liability company, or limited partnership or with the transfer of such name by the other corporation, limited liability company, or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its street address and post office box number, if any, for service of process to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the street address and post office box number, if any, at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new street address and post office box number, if any, to which his, her, or its office will be changed on a given day, at which

new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 51; Laws 1989, LB 482, § 53; Laws 1990, LB 1228, § 7; Laws 1993, LB 121, § 407; Laws 2003, LB 464, § 8; Laws 2008, LB383, § 5.
Effective date July 18, 2008.

PART XI

MISCELLANEOUS

67-294 Uniform Partnership Act of 1998; applicability.

In any case not provided for in the Nebraska Uniform Limited Partnership Act, the Uniform Partnership Act of 1998 shall govern.

Source: Laws 1981, LB 272, § 62; Laws 1989, LB 482, § 61; Laws 1997, LB 523, § 70; Laws 2008, LB707, § 1.
Effective date July 18, 2008.

Cross References

Uniform Partnership Act of 1998, see section 67-401.

ARTICLE 3

UNIFORM PARTNERSHIP ACT

PART I
PRELIMINARY PROVISIONS

Section
67-301. Repealed. Laws 2008, LB 707, § 5.
67-302. Repealed. Laws 2008, LB 707, § 5.
67-303. Repealed. Laws 2008, LB 707, § 5.
67-304. Repealed. Laws 2008, LB 707, § 5.
67-305. Repealed. Laws 2008, LB 707, § 5.

PART II
NATURE OF A PARTNERSHIP

67-306. Repealed. Laws 2008, LB 707, § 5.
67-307. Repealed. Laws 2008, LB 707, § 5.
67-308. Repealed. Laws 2008, LB 707, § 5.

PART III
RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

67-309. Repealed. Laws 2008, LB 707, § 5.
67-310. Repealed. Laws 2008, LB 707, § 5.
67-311. Repealed. Laws 2008, LB 707, § 5.
67-312. Repealed. Laws 2008, LB 707, § 5.
67-313. Repealed. Laws 2008, LB 707, § 5.
67-314. Repealed. Laws 2008, LB 707, § 5.
67-315. Repealed. Laws 2008, LB 707, § 5.
67-316. Repealed. Laws 2008, LB 707, § 5.
67-317. Repealed. Laws 2008, LB 707, § 5.

PART IV
RELATIONS OF PARTNERS TO ONE ANOTHER

67-318. Repealed. Laws 2008, LB 707, § 5.
67-319. Repealed. Laws 2008, LB 707, § 5.
67-320. Repealed. Laws 2008, LB 707, § 5.
67-321. Repealed. Laws 2008, LB 707, § 5.
67-322. Repealed. Laws 2008, LB 707, § 5.
67-323. Repealed. Laws 2008, LB 707, § 5.

PART V
PROPERTY RIGHTS OF A PARTNER

67-324. Repealed. Laws 2008, LB 707, § 5.
67-325. Repealed. Laws 2008, LB 707, § 5.
67-326. Repealed. Laws 2008, LB 707, § 5.
67-327. Repealed. Laws 2008, LB 707, § 5.

PART I

PRELIMINARY PROVISIONS.

67-301 Repealed. Laws 2008, LB 707, § 5.

67-302 Repealed. Laws 2008, LB 707, § 5.

67-303 Repealed. Laws 2008, LB 707, § 5.

67-304 Repealed. Laws 2008, LB 707, § 5.

67-305 Repealed. Laws 2008, LB 707, § 5.

PART II

NATURE OF A PARTNERSHIP

67-306 Repealed. Laws 2008, LB 707, § 5.

67-307 Repealed. Laws 2008, LB 707, § 5.

67-308 Repealed. Laws 2008, LB 707, § 5.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

67-309 Repealed. Laws 2008, LB 707, § 5.

67-310 Repealed. Laws 2008, LB 707, § 5.

67-311 Repealed. Laws 2008, LB 707, § 5.

67-312 Repealed. Laws 2008, LB 707, § 5.

67-313 Repealed. Laws 2008, LB 707, § 5.

67-314 Repealed. Laws 2008, LB 707, § 5.

67-315 Repealed. Laws 2008, LB 707, § 5.

67-316 Repealed. Laws 2008, LB 707, § 5.

67-317 Repealed. Laws 2008, LB 707, § 5.

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

67-318 Repealed. Laws 2008, LB 707, § 5.

67-319 Repealed. Laws 2008, LB 707, § 5.

67-320 Repealed. Laws 2008, LB 707, § 5.

67-321 Repealed. Laws 2008, LB 707, § 5.

67-322 Repealed. Laws 2008, LB 707, § 5.

67-323 Repealed. Laws 2008, LB 707, § 5.

PART V

PROPERTY RIGHTS OF A PARTNER

67-324 Repealed. Laws 2008, LB 707, § 5.

67-325 Repealed. Laws 2008, LB 707, § 5.

67-326 Repealed. Laws 2008, LB 707, § 5.

67-327 Repealed. Laws 2008, LB 707, § 5.

67-328 Repealed. Laws 2008, LB 707, § 5.

PART VI

DISSOLUTION AND WINDING UP

67-329 Repealed. Laws 2008, LB 707, § 5.

67-330 Repealed. Laws 2008, LB 707, § 5.

67-331 Repealed. Laws 2008, LB 707, § 5.

67-332 Repealed. Laws 2008, LB 707, § 5.

67-333 Repealed. Laws 2008, LB 707, § 5.

67-334 Repealed. Laws 2008, LB 707, § 5.

67-335 Repealed. Laws 2008, LB 707, § 5.

67-336 Repealed. Laws 2008, LB 707, § 5.

67-337 Repealed. Laws 2008, LB 707, § 5.

67-338 Repealed. Laws 2008, LB 707, § 5.

67-339 Repealed. Laws 2008, LB 707, § 5.

67-340 Repealed. Laws 2008, LB 707, § 5.

67-341 Repealed. Laws 2008, LB 707, § 5.

67-342 Repealed. Laws 2008, LB 707, § 5.

67-343 Repealed. Laws 2008, LB 707, § 5.

PART VII

REGISTERED LIMITED LIABILITY PARTNERSHIP AND FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

67-344 Repealed. Laws 2008, LB 707, § 5.

67-345 Repealed. Laws 2008, LB 707, § 5.

67-346 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

PART III
RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

Section
67-415. Statement of partnership authority.

PART X
LIMITED LIABILITY PARTNERSHIP

67-454. Statement of qualification; limited liability partnership engaged in practice of law; requirements.
67-456. Annual report; certificate of authority.

PART XI
FOREIGN LIMITED LIABILITY PARTNERSHIP

67-458. Statement of foreign qualification; foreign limited liability partnership engaged in practice of law; requirements.

PART XII
MISCELLANEOUS PROVISIONS

67-464. Partnerships; applicability of act.
67-465. Limited liability partnership; applicability of act.
67-466. Repealed. Laws 2008, LB 707, § 5.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

67-415 Statement of partnership authority.

(1) A partnership may file a statement of partnership authority, which:

(a) Must include:

(i) The name of the partnership;

(ii) The street address of its chief executive office and of one office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or the name and street address and post office box number, if any, of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to subsection (3) of section 67-406 and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.

(4) Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority; and

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the register of deeds is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the register of deeds. The recording in the office of the register of deeds of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a

certified copy of the filed statement containing the limitation on authority is of record in the office of the register of deeds.

(6) Except as otherwise provided in subsections (4) and (5) of this section and sections 67-437 and 67-443, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

Source: Laws 1997, LB 523, § 15; Laws 2008, LB383, § 6.
Effective date July 18, 2008.

PART X

LIMITED LIABILITY PARTNERSHIP

67-454 Statement of qualification; limited liability partnership engaged in practice of law; requirements.

(1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State. The statement must contain:

(a) The name of the partnership;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process;

(d) A statement that the partnership elects to be a limited liability partnership; and

(e) A deferred effective date, if any.

(4) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(5) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(6) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(9) Any limited liability partnership engaging in the practice of law in this state shall file with the Secretary of State, along with its statement of qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 54; Laws 2004, LB 16, § 6; Laws 2008, LB383, § 7.
Effective date July 18, 2008.

67-456 Annual report; certificate of authority.

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

(a) The name of the partnership and the effective date of the revocation; and

(b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Source: Laws 1997, LB 523, § 56; Laws 2004, LB 16, § 7; Laws 2008, LB383, § 8.
Effective date July 18, 2008.

PART XI

FOREIGN LIMITED LIABILITY PARTNERSHIP

67-458 Statement of foreign qualification; foreign limited liability partnership engaged in practice of law; requirements.

(1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(a) The name of the foreign limited liability partnership which (i) satisfies the requirements of the state or other jurisdiction under whose law it is formed, (ii) ends with ''registered limited liability partnership'', ''limited liability partnership'', ''R.L.L.P.'', ''RLLP'', ''L.L.P.'', ''LLP'', or similar words or abbreviations as required by the jurisdiction under whose law it is formed, and (iii) complies with the requirements of a domestic limited liability partnership as provided in subdivisions (1)(b) and (c) and subsection (2) of section 67-455;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(c) If there is no office of the partnership in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process; and

(d) A deferred effective date, if any.

(2) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(5) Any foreign limited liability partnership engaged in the practice of law in this state shall file with the Secretary of State, along with its statement of foreign qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the foreign limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 58; Laws 2004, LB 16, § 8; Laws 2008, LB383, § 9.
Effective date July 18, 2008.

PART XII

MISCELLANEOUS PROVISIONS

67-464 Partnerships; applicability of act.

On and after January 1, 2001, the Uniform Partnership Act of 1998 governs all partnerships.

Source: Laws 1997, LB 523, § 64; Laws 2008, LB707, § 2.
Effective date July 18, 2008.

67-465 Limited liability partnership; applicability of act.

After January 1, 2001, the Uniform Partnership Act of 1998 governs all limited liability partnerships.

Source: Laws 1997, LB 523, § 65; Laws 2008, LB707, § 3.
Effective date July 18, 2008.

67-466 Repealed. Laws 2008, LB 707, § 5.

CHAPTER 68
PAUPERS AND PUBLIC ASSISTANCE

Article.
1. Miscellaneous Provisions. 68-104 to 68-156.
3. State Assistance Fund. 68-309 to 68-313.
7. Department Duties. 68-703.01 to 68-720.
9. Medical Assistance Act. 68-901 to 68-956.
10. Assistance, Generally.
    (a) Assistance to the Aged, Blind, or Disabled. 68-1001.01 to 68-1014.
    (b) Procedure and Penalties. 68-1015 to 68-1017.02.
    (c) Medical Assistance. 68-1018 to 68-1037.05. Transferred or Repealed.
    (d) Entitlement of Spouse. 68-1038 to 68-1043. Transferred.
    (f) Managed Care Plan. 68-1048 to 68-1064. Repealed.
    (g) Medicaid Recipients Participating in Managed Care Plan. 68-1067 to 68-1069. Repealed.
    (h) Non-United-States Citizens. 68-1070.
    (i) School Districts and Educational Service Units. 68-1071, 68-1072. Repealed.
    (j) False Medicaid Claims Act. 68-1073 to 68-1086. Transferred.
    (k) Medicaid Reform Act. 68-1087 to 68-1094. Repealed.
    (l) Long-Term Care Partnership Program. 68-1095 to 68-1099.
    (m) Coordination of Benefits. 68-10,100 to 68-10,107. Transferred.
11. Department on Aging Advisory Committee. 68-1101 to 68-1105.
12. Social Services. 68-1202 to 68-1210.
14. Genetically Handicapped Persons. 68-1402 to 68-1405.
15. Disabled Persons and Family Support.
    (a) Disabled Persons and Family Support Act. 68-1503 to 68-1514.
    (b) Nebraska Lifespan Respite Services Program. 68-1521 to 68-1523.
16. Homeless Shelter Assistance. 68-1604.
17. Welfare Reform.
    (a) Welfare Reform Act. 68-1709 to 68-1732.
    (b) Governor's Roundtable. 68-1736, 68-1737. Repealed.
18. ICF/MR Reimbursement Protection Act. 68-1801 to 68-1809.

ARTICLE 1
MISCELLANEOUS PROVISIONS

Section
68-104. Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties.
68-126. Health services; maximum payments; rules and regulations; standard of need for medical services; established.
68-129. Public assistance; computation of available resources; exclusions.
68-130. Counties; maintain office and service facilities.
68-150. Application; right of subrogation.
68-156. Employable recipients; community service program; report.

68-104 Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties.

The Department of Health and Human Services shall be the overseer of the poor and shall be vested with the entire and exclusive superintendence of the poor in this state, except that the county board of each county shall furnish such medical service as may be required for the poor of the county who are not

eligible for other medical assistance programs and general assistance for the poor of the county. Any person who is or becomes ineligible for other medical assistance programs due to his or her own actions or inactions shall also be ineligible for medical services from the county.

The county board of each county shall administer the medical assistance provided pursuant to this section. A county board may enter into an agreement with the Department of Health and Human Services which allows the department to aid in the administration of such medical assistance program. In providing medical and hospital care for the poor, the county board shall make use of any existing facilities, including tax-supported hospitals and charitable clinics so far as the same may be available, and shall use the financial eligibility criteria established for the standard of need developed by the county pursuant to section 68-126.

A county board may transfer funds designated for public assistance to the Department of Health and Human Services for purposes of payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements pursuant to subdivision (2)(c) of section 68-910.

Source: R.S.1866, c. 40, § 4, p. 275; Laws 1875, § 1, p. 89; R.S.1913, § 5798; Laws 1915, c. 20, § 1, p. 80; Laws 1919, c. 128, § 1, p. 302; C.S.1922, § 5143; C.S.1929, § 68-104; Laws 1937, c. 150, § 1, p. 574; C.S.Supp.,1941, § 68-104; R.S.1943, § 68-104; Laws 1947, c. 218, § 1, p. 705; Laws 1982, LB 522, § 20; Laws 1982, LB 602, § 1; Laws 1983, LB 604, § 19; Laws 1984, LB 886, § 1; Laws 1995, LB 455, § 3; Laws 1996, LB 1044, § 285; Laws 2006, LB 1248, § 67; Laws 2007, LB292, § 1.

Cross References

For powers of health district in counties over 200,000 population, see section 71-1623.
General assistance, see sections 68-131 to 68-148.
Health services, maximum payments and standards established, see section 68-126.
Township counties, county board has charge of care of the poor, see section 23-248.

68-126 Health services; maximum payments; rules and regulations; standard of need for medical services; established.

The Department of Health and Human Services shall adopt and promulgate rules and regulations establishing maximum payments for all health services furnished to recipients of public assistance. Each county shall, not later than December 31, 1984, establish a standard of need for medical services furnished, pursuant to section 68-104, by the counties to indigent persons who are not eligible for other medical assistance programs. This standard shall not exceed the Office of Management and Budget income poverty guidelines.

Source: Laws 1963, c. 384, § 1, p. 1229; Laws 1982, LB 522, § 25; Laws 1982, LB 602, § 4; Laws 1984, LB 886, § 2; Laws 1996, LB 1044, § 286; Laws 2007, LB296, § 236.

68-129 Public assistance; computation of available resources; exclusions.

The Department of Health and Human Services shall, by rule and regulation, when determining need for public assistance on the basis of available resources, exclude from the definition of available resources of an applicant for assistance either the funds deposited in an irrevocable trust fund created

pursuant to section 12-1106 or up to four thousand dollars, increased annually as provided in this section, of the amount paid for a policy of insurance the proceeds of which are specifically and irrevocably designated, assigned, or pledged for the payment of the applicant's burial expenses. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. This section shall not preclude the eligibility for assistance of an applicant who has purchased such a policy of insurance prior to July 9, 1988, unless such applicant is subject to subdivision (3) of section 68-1002.

Source: Laws 1982, LB 314, § 1; Laws 1986, LB 643, § 22; Laws 1988, LB 1010, § 1; Laws 1996, LB 1044, § 288; Laws 2006, LB 85, § 2; Laws 2007, LB296, § 237.

68-130 Counties; maintain office and service facilities.

Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

Source: Laws 1982, LB 604, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238.

68-150 Application; right of subrogation.

An application for county general assistance or for county health services shall give a right of subrogation to the county furnishing such aid. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the county as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1984, LB 886, § 8; Laws 1988, LB 419, § 12; Laws 1989, LB 362, § 5; Laws 2006, LB 1248, § 68.

68-156 Employable recipients; community service program; report.

Any county utilizing a community service program for employable recipients as outlined in sections 68-151 to 68-155 shall file an annual written report which shall include the number of persons placed through the community service program, the numbers of hours of experience provided, the duration and location of each placement including the name and address of the business or agency accepting the placement, and the specific skills learned in the placement.

The report shall be filed with the Department of Health and Human Services by October 1 of each year for the fiscal year ending the preceding June 30.

Source: Laws 1991, LB 227, § 9; Laws 1996, LB 1044, § 291; Laws 2005, LB 301, § 1.

ARTICLE 3
STATE ASSISTANCE FUND

Section
68-309. Department of Health and Human Services; sole state agency for administration of welfare programs.
68-312. Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.
68-313. Records and information; use and disclosure; limitations.

68-309 Department of Health and Human Services; sole state agency for administration of welfare programs.

The Department of Health and Human Services shall be the sole agency of the State of Nebraska to administer the State Assistance Fund for assistance to the aged, blind, or disabled, aid to dependent children, medical assistance, medically handicapped children's services, child welfare services, and such other assistance and services as may be made available to the State of Nebraska by the government of the United States.

Source: Laws 1935, Spec. Sess., c. 20, § 7, p. 136; C.S.Supp.,1941, § 68-323; R.S.1943, § 68-309; Laws 1951, c. 216, § 1, p. 780; Laws 1963, c. 388, § 2, p. 1238; Laws 1965, c. 399, § 2, p. 1280; Laws 1982, LB 522, § 28; Laws 1985, LB 249, § 2; Laws 1996, LB 1044, § 294; Laws 2007, LB296, § 239.

68-312 Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.

The Department of Health and Human Services has the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the state. The use of such records, papers, files, and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-312; Laws 1982, LB 522, § 29; Laws 1996, LB 1044, § 295; Laws 2007, LB296, § 240.

68-313 Records and information; use and disclosure; limitations.

It shall be unlawful, except as permitted by section 68-313.01 and except for purposes directly connected with the administration of general assistance, medically handicapped children's services, medical assistance, assistance to the aged, blind, or disabled, or aid to dependent children, and in accordance with the rules and regulations of the Department of Health and Human Services, for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, any information concerning, or persons applying for or receiving such aid or assistance, directly or indirectly derived from the records, papers, files, or communications of the state, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1985, LB 249, § 3; Laws 1996, LB 1044, § 296; Laws 2007, LB296, § 241.

ARTICLE 7
DEPARTMENT DUTIES

Section
68-703.01. Department of Health and Human Services; federal funds; expenditures; authorized.
68-716. Department of Health and Human Services; medical assistance; right of subrogation.
68-717. Department of Health and Human Services; assume responsibility for public assistance programs.
68-718. Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.
68-720. Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.

68-703.01 Department of Health and Human Services; federal funds; expenditures; authorized.

The Department of Health and Human Services has the authority to use any funds which may be made available through an agency of the government of the United States to reimburse any county of this state, either in whole or in part, for the following expenditures: (1) Employment of staff whose duties involve the giving or strengthening of services to children, (2) the return of any nonresident child to his or her place of residence when such child shall be found in the county, and (3) the temporary cost of board and care of a needy child who by necessity requires care in a foster home.

Source: Laws 1959, c. 312, § 1, p. 1152; Laws 1961, c. 415, § 16, p. 1254; Laws 1996, LB 1044, § 298; Laws 2007, LB296, § 242.

68-716 Department of Health and Human Services; medical assistance; right of subrogation.

An application for medical assistance shall give a right of subrogation to the Department of Health and Human Services or its assigns. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the department or its assigns as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1976, LB 239, § 1; Laws 1982, LB 522, § 35; Laws 1988, LB 419, § 14; Laws 1989, LB 362, § 7; Laws 1996, LB 1044, § 300; Laws 1996, LB 1155, § 22; Laws 2006, LB 1248, § 69; Laws 2007, LB296, § 243.

68-717 Department of Health and Human Services; assume responsibility for public assistance programs.

The Department of Health and Human Services shall assume the responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, food stamps, and medical assistance.

Source: Laws 1982, LB 522, § 33; Laws 1983, LB 604, § 23; Laws 1985, LB 249, § 4; Laws 1989, LB 362, § 8; Laws 1996, LB 1044, § 301; Laws 2007, LB296, § 244.

68-718 Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.

All furniture, equipment, books, files, records, and personnel utilized by the county divisions or boards of public welfare for the administration of public assistance programs shall be transferred and delivered to the Department of Health and Human Services. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Fund.

Source: Laws 1982, LB 522, § 34; Laws 1996, LB 1044, § 302; Laws 2007, LB296, § 245.

68-720 Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.

(1) The Department of Health and Human Services shall establish an administrative disqualification process for the aid to dependent children program described in section 43-512 and the child care subsidy program established pursuant to section 68-1202. The department may initiate an administrative disqualification proceeding when it has reason to believe, on the basis of sufficient documentary evidence, that an individual has committed an intentional program violation. Proceedings under this section shall be subject to the Administrative Procedure Act.

(2) If an individual is found to have committed an intentional program violation, a period of disqualification shall be imposed. The period may be determined by the Department of Health and Human Services after an administrative disqualification hearing or without a hearing if the individual waives his or her right to such hearing. The period of disqualification shall be: (a) For a first violation, up to one year; (b) for a second violation, up to two years; and (c) for a third violation, permanent disqualification. The penalties described in this subsection shall also be imposed if the individual is found by a court to have violated section 68-1017.

(3) For the aid to dependent children program, only the individual found to have committed the intentional program violation shall be disqualified under this section. For the child care subsidy program, the individual found to have committed the intentional violation shall disqualify such individual and his or her family under this section. The department shall inform each applicant in writing of the penalties described in this section for intentional program violations each time an application for benefits is made to either program.

(4) For purposes of this section, intentional program violation means any action by an individual to intentionally (a) make a false statement, either verbally or in writing, to obtain benefits to which the individual is not entitled, (b) conceal information to obtain benefits to which the individual is not entitled, or (c) alter one or more documents to obtain benefits to which the individual is not entitled.

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

Source: Laws 2008, LB797, § 30.
Operative date April 1, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 9
MEDICAL ASSISTANCE ACT

Section
68-901. Act, how cited.
68-902. Purposes of act.
68-903. Medical assistance program; established.
68-904. Legislative findings.
68-905. Program of medical assistance; statement of public policy.
68-906. Medical assistance; state accepts federal provisions.
68-907. Terms, defined.
68-908. Department; powers and duties.
68-909. Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; Medicaid Reform Council; department; powers and duties.
68-910. Medical assistance payments; source of funds.
68-911. Medical assistance; mandated and optional coverage.
68-912. Limits on goods and services; considerations; procedure.
68-913. Medical assistance program; public awareness; public school district; hospital; duties.
68-914. Application for medical assistance; contents; department; decision; appeal.
68-915. Eligibility.
68-916. Medical assistance; application; assignment of rights; exception.
68-917. Applicant or recipient; failure to cooperate; effect.
68-918. Restoration of rights; when.
68-919. Medical assistance recipient; liability; when; claim; procedure; department; powers.
68-920. Department; garnish employment income; when; limitation.
68-921. Entitlement of spouse; terms, defined.
68-922. Amount of entitlement; department; rules and regulations.
68-923. Assets; eligibility for assistance; future medical support; considerations; subrogation.
68-924. Designation of assets; procedure.
68-925. Department; furnish statement.
68-926. Legislative findings.
68-927. Terms, defined.
68-928. Licensed insurer or self-funded insurer; provide coverage information.
68-929. Licensed insurer; violation.
68-930. Self-funded insurer; violation; civil penalty.
68-931. Recovery; authorized.
68-932. Process for resolving violations; appeal.
68-933. Civil penalties; disposition.
68-934. Act, how cited.
68-935. Terms, defined.
68-936. Presentation of false medicaid claim; civil liability; civil penalty; costs and attorney's fees.
68-937. Failure to report.
68-938. Charge, solicitation, acceptance, or receipt; unlawful; when.
68-939. Records; duties; acts prohibited; liability; costs and attorney's fees.
68-940. Penalties or damages; considerations; liability; costs and attorney's fees.
68-941. Limitation of actions; burden of proof.
68-942. Investigation and prosecution.
68-943. State medicaid fraud control unit; certification.
68-944. State medicaid fraud control unit; powers and duties.
68-945. Attorney General; powers and duties.
68-946. Attorney General; access to records.
68-947. Contempt of court.

Section
68-948. Medicaid Reform Council; established; members; duties; expenses; termination.
68-949. Medical assistance program; legislative intent; department; duties; reports.
68-950. Act, how cited.
68-951. Purpose of act.
68-952. Terms, defined.
68-953. Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.
68-954. Preferred drug list; considerations; availability of list.
68-955. Prescription of drug not on preferred drug list; conditions.
68-956. Department; duties.

68-901 Act, how cited.

Sections 68-901 to 68-956 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1.
Effective date July 18, 2008.

68-902 Purposes of act.

The purposes of the Medical Assistance Act are to (1) reorganize and recodify statutes relating to the medical assistance program, (2) provide for implementation of the Medicaid Reform Plan, (3) clarify public policy relating to the medical assistance program, (4) provide for administration of the medical assistance program within the department, and (5) provide for legislative oversight and public comment regarding the medical assistance program.

Source: Laws 2006, LB 1248, § 2.

68-903 Medical assistance program; established.

The medical assistance program is established, which shall also be known as medicaid.

Source: Laws 1965, c. 397, § 3, p. 1277; R.S.1943, (2003), § 68-1018; Laws 2006, LB 1248, § 3.

68-904 Legislative findings.

The Legislature finds that (1) many low-income Nebraska residents have health care and related needs and are unable, without assistance, to meet such needs, (2) publicly funded medical assistance provides essential coverage for necessary health care and related services for eligible low-income Nebraska children, pregnant women and families, aged persons, and persons with disabilities, (3) publicly funded medical assistance alone cannot meet all of the health care and related needs of all low-income Nebraska residents, (4) the State of Nebraska cannot sustain a rate of growth in medical assistance expenditures that exceeds the rate of growth of General Fund revenue, (5) policies must be established for the medical assistance program that will effectively address the health care and related needs of eligible recipients and effectively moderate the growth of medical assistance expenditures, and (6) publicly funded medical assistance must be integrated with other public and private health care and related initiatives providing access to health care and related services for Nebraska residents.

Source: Laws 2006, LB 1248, § 4.

68-905 Program of medical assistance; statement of public policy.

It is the public policy of the State of Nebraska to provide a program of medical assistance on behalf of eligible low-income Nebraska residents that (1) assists eligible recipients to access necessary and appropriate health care and related services, (2) emphasizes prevention, early intervention, and the provision of health care and related services in the least restrictive environment consistent with the health care and related needs of the recipients of such services, (3) emphasizes personal independence, self-sufficiency, and freedom of choice, (4) emphasizes personal responsibility and accountability for the payment of health care and related expenses and the appropriate utilization of health care and related services, (5) cooperates with public and private sector entities to promote the public health, (6) cooperates with providers, public and private employers, and private sector insurers in providing access to health care and related services and encouraging and supporting the development and utilization of alternatives to publicly funded medical assistance for such services, (7) is appropriately managed and fiscally sustainable, and (8) qualifies for federal matching funds under federal law.

Source: Laws 2006, LB 1248, § 5.

68-906 Medical assistance; state accepts federal provisions.

For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2008.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB 1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp.,2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1; Laws 2008, LB797, § 4.
Operative date April 1, 2008.

68-907 Terms, defined.

For purposes of the Medical Assistance Act:

(1) Committee means the Health and Human Services Committee of the Legislature;

(2) Department means the Department of Health and Human Services;

(3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;

(4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;

(5) Provider means a person providing health care or related services under the medical assistance program; and

(6) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2006, LB 1248, § 7; Laws 2007, LB296, § 246.

68-908 Department; powers and duties.

(1) The department shall administer the medical assistance program.

(2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for eligible recipients, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4)(a) The department shall prepare a biennial summary and analysis of the medical assistance program for legislative and public review, including, but not limited to, a description of eligible recipients, covered services, provider reimbursement, program trends and projections, program budget and expenditures, the status of implementation of the Medicaid Reform Plan, and recommendations for program changes.

(b) The department shall provide a draft report of such summary and analysis to the Medicaid Reform Council no later than October 1 of each even-numbered year. The council shall conduct a public meeting no later than October 15 of such year to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1 of such year. The department shall submit a final report of such summary and analysis to the Governor, the Legislature, and the council no later than December 1 of such year.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296, § 247.

68-909 Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; Medicaid Reform Council; department; powers and duties.

(1) All contracts, agreements, rules, and regulations relating to the medical assistance program as entered into or adopted and promulgated by the department prior to July 1, 2006, and all provisions of the medicaid state plan and waivers adopted by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law.

(2) Prior to the adoption and promulgation of proposed rules and regulations under section 68-912 or relating to the implementation of medicaid state plan amendments or waivers, the department shall provide a report to the Governor,

the Legislature, and the Medicaid Reform Council no later than December 1 before the next regular session of the Legislature summarizing the purpose and content of such proposed rules and regulations and the projected impact of such proposed rules and regulations on recipients of medical assistance and medical assistance expenditures.

(3) The Medicaid Reform Council, no later than thirty days after the date of receipt of any report under subsection (2) of this section, may conduct a public meeting to receive public comment regarding such report. The council shall promptly provide any comments and recommendations regarding such report in writing to the department. Such comments and recommendations shall be advisory only and shall not be binding on the department, but the department shall promptly provide a written response to such comments or recommendations to the council.

(4) The department shall monitor and shall periodically, as necessary, but no less than biennially, report to the Governor, the Legislature, and the Medicaid Reform Council on the implementation of rules and regulations, medicaid state plan amendments, and waivers adopted under the Medical Assistance Act and the effect of such rules and regulations, amendments, or waivers on eligible recipients of medical assistance and medical assistance expenditures.

Source: Laws 2006, LB 1248, § 9; Laws 2008, LB928, § 15.
Operative date July 18, 2008.

68-910 Medical assistance payments; source of funds.

(1) Medical assistance shall be paid from General Funds, cash funds, federal funds, and such other funds as may qualify for federal matching funds under federal law. General Fund appropriations for the program shall be based on an assessment by the Legislature of General Fund revenue and the competing needs of other state-funded programs.

(2) Medical assistance paid on behalf of eligible recipients may include, but is not limited to, (a) direct payments to vendors under a fee-for-service, managed care, or other provider contract, (b) premium payments, deductibles, and coinsurance for private health insurance coverage, employer-sponsored coverage, catastrophic health insurance coverage, or long-term care insurance coverage, and (c) payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements.

(3) Medical assistance shall not be paid directly to eligible recipients.

Source: Laws 1965, c. 397, § 7, p. 1278; Laws 1967, c. 410, § 2, p. 1274; Laws 1979, LB 138, § 1; Laws 1981, LB 39, § 1; Laws 1982, LB 522, § 42; Laws 1983, LB 604, § 24; Laws 1986, LB 1253, § 1; R.S.1943, (2003), § 68-1022; Laws 2006, LB 1248, § 10.

68-911 Medical assistance; mandated and optional coverage.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Inpatient and outpatient hospital services;

(b) Laboratory and X-ray services;

(c) Nursing facility services;

(d) Home health services;

(e) Nursing services;

(f) Clinic services;

(g) Physician services;

(h) Medical and surgical services of a dentist;

(i) Nurse practitioner services;

(j) Nurse midwife services;

(k) Pregnancy-related services;

(l) Medical supplies; and

(m) Early and periodic screening and diagnosis and treatment services for children.

(2) Medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Prescribed drugs;

(b) Intermediate care facilities for the mentally retarded;

(c) Home and community-based services for aged persons and persons with disabilities;

(d) Dental services;

(e) Rehabilitation services;

(f) Personal care services;

(g) Durable medical equipment;

(h) Medical transportation services;

(i) Vision-related services;

(j) Speech therapy services;

(k) Physical therapy services;

(l) Chiropractic services;

(m) Occupational therapy services;

(n) Optometric services;

(o) Podiatric services;

(p) Hospice services;

(q) Mental health and substance abuse services;

(r) Hearing screening services for newborn and infant children; and

(s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11.

68-912 Limits on goods and services; considerations; procedure.

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program, and (c) requirements for recipients of medical assistance as a necessary condition for the continued receipt of such assistance, including, but not limited to, active participation in care coordination and appropriate disease management programs and activities.

(2) In establishing and limiting coverage for services under the medical assistance program, the department shall consider (a) the effect of such coverage and limitations on recipients of medical assistance and medical assistance expenditures, (b) the public policy in section 68-905, (c) the experience and outcomes of other states, (d) the nature and scope of benchmark or benchmark-equivalent health insurance coverage as recognized under federal law, and (e) other relevant factors as determined by the department.

(3) Coverage for mandatory and optional services and limitations on covered services as established by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law. Any proposed reduction or expansion of services or limitation of covered services by the department under this section shall be subject to the reporting and review requirements of section 68-909.

(4) Except as otherwise provided in this subsection, proposed rules and regulations under this section relating to the establishment of premiums, copayments, or deductibles for eligible recipients or limits on the amount, duration, or scope of covered services for eligible recipients shall not become effective until the conclusion of the earliest regular session of the Legislature in which there has been a reasonable opportunity for legislative consideration of such rules and regulations. This subsection does not apply to rules and regulations that are (a) required by federal or state law, (b) related to a waiver in which recipient participation is voluntary, or (c) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category. Legislative consideration includes, but is not limited to, the introduction of a legislative bill, a legislative resolution, or an amendment to pending legislation relating to such rules and regulations.

Source: Laws 1993, LB 804, § 2; Laws 1996, LB 1044, § 316; R.S.1943, (2003), § 68-1019.01; Laws 2006, LB 1248, § 12.

68-913 Medical assistance program; public awareness; public school district; hospital; duties.

(1) Each public school district shall annually, at the beginning of the school year, provide written information supplied by the department to every student describing the availability of children's health services provided under the medical assistance program.

(2) Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the department describing the availability of children's health services provided under the medical assistance program.

(3) The department shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the medical assistance program. Such activities shall include

materials and efforts designed to increase participation in the program by minority populations.

Source: Laws 1998, LB 1063, § 10; R.S.1943, (2003), § 68-1025.01; Laws 2006, LB 1248, § 13; Laws 2007, LB296, § 248.

68-914 Application for medical assistance; contents; department; decision; appeal.

An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Decisions of the department, including the failure of the department to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 1248, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

(1) Dependent children as defined in section 43-504;

(2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;

(3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;

(4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;

(5) Children under nineteen years of age and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income; and

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group.

Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3.

68-916 Medical assistance; application; assignment of rights; exception.

The application for medical assistance shall constitute an automatic assignment of the rights specified in this section to the department or its assigns

effective from the date of eligibility for such assistance. The assignment shall include the rights of the applicant or recipient and also the rights of any other member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections 68-921 to 68-925, the applicant or recipient shall assign to the department or its assigns any rights to medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance. Medicare benefits shall not be assigned pursuant to this section. Rights assigned to the department or its assigns under this section may be directly reimbursable to the department or its assigns by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

Source: Laws 1984, LB 723, § 1; Laws 1988, LB 419, § 15; Laws 1989, LB 362, § 10; Laws 1996, LB 1044, § 326; Laws 1996, LB 1155, § 23; R.S.1943, (2003), § 68-1026; Laws 2006, LB 1248, § 16.

68-917 Applicant or recipient; failure to cooperate; effect.

Refusal by the applicant or recipient specified in section 68-916 to cooperate in obtaining reimbursement for medical care or services provided to himself or herself or any other member of the assistance group renders the applicant or recipient ineligible for assistance. Ineligibility shall continue for so long as such person refuses to cooperate. Cooperation may be waived by the department upon a determination of the reasonable likelihood of physical or emotional harm to the applicant, recipient, or other member of the assistance group if the applicant or recipient were to cooperate. Eligibility shall continue for any individual who cannot legally assign his or her own rights and who would have been eligible for assistance but for the refusal by another person, legally able to assign such individual's rights, to cooperate as required by this section.

Source: Laws 1984, LB 723, § 2; Laws 1997, LB 307, § 108; R.S.1943, (2003), § 68-1027; Laws 2006, LB 1248, § 17.

68-918 Restoration of rights; when.

If the applicant or recipient or any member of the assistance group becomes ineligible for medical assistance, the department shall restore to him or her the rights assigned under section 68-916.

Source: Laws 1984, LB 723, § 3; Laws 1997, LB 307, § 109; R.S.1943, (2003), § 68-1028; Laws 2006, LB 1248, § 18.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers.

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for the mentally retarded, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(5) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2.

68-920 Department; garnish employment income; when; limitation.

The department may garnish the wages, salary, or other employment income of a person for the costs of health services provided to a child who is eligible for medical assistance pursuant to the medical assistance program if:

(1) The person is required by court or administrative order to provide health care coverage for the costs of such services; and

(2) The person has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount garnished shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program. Any claim for current or past-due child support shall take priority over a claim for the costs of health services.

Source: Laws 1994, LB 1224, § 71; Laws 1996, LB 1044, § 335; R.S.1943, (2003), § 68-1036.03; Laws 2006, LB 1248, § 20.

68-921 Entitlement of spouse; terms, defined.

For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for the mentally retarded, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

Source: Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250.

Cross References

Health Care Facility Licensure Act, see section 71-401.

68-922 Amount of entitlement; department; rules and regulations.

For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections 68-716, 68-915, and 68-916, a spouse may retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer this section in accordance with section 1924 of the Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5,

and shall adopt and promulgate rules and regulations as necessary to implement and enforce sections 68-921 to 68-925.

Source: Laws 1988, LB 419, § 2; Laws 1989, LB 362, § 12; R.S.1943, (2003), § 68-1039; Laws 2006, LB 1248, § 22; Laws 2007, LB296, § 251.

68-923 Assets; eligibility for assistance; future medical support; considerations; subrogation.

If a portion of the aggregate assets is designated in accordance with section 68-924:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the assets designated for the spouse shall not be taken into account and proof of adequate consideration for any assignment or transfer made as a result of the designation of assets shall not be required;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Recovery may not be made from the assets designated for the spouse for any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the department nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

Source: Laws 1988, LB 419, § 3; Laws 1989, LB 362, § 13; R.S.1943, (2003), § 68-1040; Laws 2006, LB 1248, § 23; Laws 2007, LB296, § 252.

68-924 Designation of assets; procedure.

A designation of assets pursuant to section 68-922 shall be evidenced by a written statement listing such assets and signed by the spouse. A copy of such statement shall be provided to the department at the time of application and shall designate assets owned as of the date of application. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations adopted and promulgated under section 68-922 may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

Source: Laws 1988, LB 419, § 5; Laws 1989, LB 362, § 14; R.S.1943, (2003), § 68-1042; Laws 2006, LB 1248, § 24; Laws 2007, LB296, § 253.

68-925 Department; furnish statement.

The department shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement explaining the provisions of section 68-922.

Source: Laws 1988, LB 419, § 6; Laws 1989, LB 362, § 15; Laws 1996, LB 1044, § 337; R.S.1943, (2003), § 68-1043; Laws 2006, LB 1248, § 25; Laws 2007, LB296, § 254.

68-926 Legislative findings.

The Legislature finds that (1) the department relies on health insurance and claims information from private insurers to ensure accuracy in processing state benefit program payments to providers and in verifying individual recipients' eligibility, (2) delay or refusal to provide such information causes unnecessary expenditures of state funds, (3) disclosure of such information to the department is permitted pursuant to the federal Health Insurance Portability and Accountability privacy rules under 45 C.F.R. part 164, and (4) for medical assistance program recipients who also have other insurance coverage, including coverage by licensed and self-funded insurers, the department is required by 42 U.S.C. 1396a(a)(25) to assure that licensed and self-funded insurers coordinate benefits with the program.

Source: Laws 2005, LB 589, § 1; R.S.Supp.,2005, § 68-10,100; Laws 2006, LB 1248, § 26; Laws 2007, LB296, § 255.

68-927 Terms, defined.

For purposes of sections 68-926 to 68-933:

(1) Coordinate benefits means:

(a) Provide to the department information regarding the licensed insurer's or self-funded insurer's existing coverage for an individual who is eligible for a state benefit program; and

(b) Meet payment obligations;

(2) Coverage information means health information possessed by a licensed insurer or self-funded insurer that is limited to the following information about an individual:

(a) Eligibility for coverage under a health plan;

(b) Coverage of health care under the health plan; or

(c) Benefits and payments associated with the health plan;

(3) Health plan means any policy of insurance issued by a licensed insurer or any employee benefit plan offered by a self-funded insurer that provides for payment to or on behalf of an individual as a result of an illness, disability, or injury or change in a health condition;

(4) Individual means a person covered by a state benefit program, including the medical assistance program, or a person applying for such coverage;

(5) Licensed insurer means any insurer, except a self-funded insurer, including a fraternal benefit society, producer, or other person licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state; and

(6) Self-funded insurer means any employer or union who or which provides a self-funded employee benefit plan.

Source: Laws 2005, LB 589, § 2; R.S.Supp.,2005, § 68-10,101; Laws 2006, LB 1248, § 27; Laws 2007, LB296, § 256.

68-928 Licensed insurer or self-funded insurer; provide coverage information.

(1) Except as provided in subsection (2) of this section, at the request of the department, a licensed insurer or a self-funded insurer shall provide coverage information to the department without an individual's authorization for purposes of:

(a) Determining an individual's eligibility for state benefit programs, including the medical assistance program; or

(b) Coordinating benefits with state benefit programs.

Such information shall be provided within thirty days after the date of request unless good cause is shown. Requests for coverage information shall specify individual recipients for whom information is being requested.

(2)(a) Coverage information requested pursuant to subsection (1) of this section regarding a limited benefit policy shall be limited to whether a specified individual has coverage and, if so, a description of that coverage, and such information shall be used solely for the purposes of subdivision (1)(a) of this section.

(b) For purposes of this section, limited benefit policy means a policy of insurance issued by a licensed insurer that consists only of one or more, or any combination of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage for specified disease or illness; or

(iii) Hospital indemnity or other fixed indemnity insurance.

Source: Laws 2005, LB 589, § 3; R.S.Supp.,2005, § 68-10,102; Laws 2006, LB 1248, § 28; Laws 2007, LB296, § 257.

68-929 Licensed insurer; violation.

Any violation of section 68-928 by a licensed insurer shall be subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 2005, LB 589, § 4; R.S.Supp.,2005, § 68-10,103; Laws 2006, LB 1248, § 29.

68-930 Self-funded insurer; violation; civil penalty.

The department may impose and collect a civil penalty on a self-funded insurer who violates the requirements of section 68-928 if the department finds that the self-funded insurer:

(1) Committed the violation flagrantly and in conscious disregard of the requirements; or

(2) Has committed violations with such frequency as to indicate a general business practice to engage in that type of conduct.

The civil penalty shall not be more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation by the self-funded insurer was committed flagrantly and in conscious disregard of section 68-928, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars.

Source: Laws 2005, LB 589, § 5; R.S.Supp.,2005, § 68-10,104; Laws 2006, LB 1248, § 30; Laws 2007, LB296, § 258.

68-931 Recovery; authorized.

The department is authorized to recover all amounts paid or to be paid to state benefit programs as a result of failure to coordinate benefits by a licensed insurer or a self-funded insurer.

Source: Laws 2005, LB 589, § 6; R.S.Supp.,2005, § 68-10,105; Laws 2006, LB 1248, § 31; Laws 2007, LB296, § 259.

68-932 Process for resolving violations; appeal.

The department shall establish a process by rule and regulation for resolving any violation by a self-funded insurer of section 68-928 and for assessing the financial penalties contained in section 68-930. Any appeal of an action by the department under such policies shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 589, § 7; R.S.Supp.,2005, § 68-10,106; Laws 2006, LB 1248, § 32; Laws 2007, LB296, § 260.

Cross References

Administrative Procedure Act, see section 84-920.

68-933 Civil penalties; disposition.

All money collected as a civil penalty under section 68-929 or 68-930 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2005, LB 589, § 8; R.S.Supp.,2005, § 68-10,107; Laws 2006, LB 1248, § 33.

68-934 Act, how cited.

Sections 68-934 to 68-947 shall be known and may be cited as the False Medicaid Claims Act.

Source: Laws 1996, LB 1155, § 67; R.S.1943, (2003), § 68-1037.01; Laws 2004, LB 1084, § 1; R.S.Supp.,2004, § 68-1073; Laws 2006, LB 1248, § 34.

68-935 Terms, defined.

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, provider, or other recipient if the state provides any portion of the money or

property that is requested or demanded or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded, whether or not the state pays any portion of such request or demand;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4) Knowing or knowingly means that a person, with respect to information:

(a) Has actual knowledge of such information;

(b) Acts in deliberate ignorance of the truth or falsity of such information; or

(c) Acts in reckless disregard of the truth or falsity of such information;

(5) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(6) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

Source: Laws 1996, LB 1155, § 68; R.S.1943, (2003), § 68-1037.02; Laws 2004, LB 1084, § 2; R.S.Supp.,2004, § 68-1074; Laws 2006, LB 1248, § 35.

68-936 Presentation of false medicaid claim; civil liability; civil penalty; costs and attorney's fees.

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval;

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval by the state of a false or fraudulent claim;

(c) Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent claim;

(d) Has possession, custody, or control of property or money used, or that will be used, by the state and, intending to defraud the state or willfully conceal the property, delivers, or causes to be delivered, less property than the amount for which such person receives a certificate or receipt;

(e) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state knowing that such officer or employee may not lawfully sell or pledge such property; or

(f) Knowingly makes, uses, or causes to be made or used, a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

(2) A person who presents a false medicaid claim under subsection (1) of this section is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, a person who presents a false medicaid claim under subsection (1)

of this section may be subject to damages in the amount of three times the amount of the false claim submitted to the state due to the act of such person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

Source: Laws 1996, LB 1155, § 69; Laws 1997, LB 307, § 110; R.S.1943, (2003), § 68-1037.03; Laws 2004, LB 1084, § 3; R.S.Supp.,2004, § 68-1075; Laws 2006, LB 1248, § 36.

68-937 Failure to report.

A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in section 68-936, if such person is a beneficiary of an inadvertent submission of a false medicaid claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within sixty days of such discovery. The beneficiary is not obliged to make such a report to the department if more than six years have passed since submission of the claim.

Source: Laws 2004, LB 1084, § 4; R.S.Supp.,2004, § 68-1076; Laws 2006, LB 1248, § 37.

68-938 Charge, solicitation, acceptance, or receipt; unlawful; when.

A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in section 68-936, if he or she, acting on behalf of a provider providing such good or service to a recipient under the medical assistance program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

Source: Laws 2004, LB 1084, § 5; R.S.Supp.,2004, § 68-1077; Laws 2006, LB 1248, § 38.

68-939 Records; duties; acts prohibited; liability; costs and attorney's fees.

(1) A person violates the False Medicaid Claims Act and is subject to civil liability as provided in section 68-936 and damages as provided in subsection (2) of this section if he or she:

(a) Having submitted a claim or received payment for a good or service under the medical assistance program, knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which payment was received; or

(b) Knowingly destroys such records within six years from the date payment was received.

(2) A person who knowingly fails to maintain records or who knowingly destroys records within six years from the date payment for a claim was received shall be subject to damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed.

(3) If the state is the prevailing party in an action under this section, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

Source: Laws 2004, LB 1084, § 6; R.S.Supp.,2004, § 68-1078; Laws 2006, LB 1248, § 39.

68-940 Penalties or damages; considerations; liability; costs and attorney's fees.

(1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

(a) The nature of claims and the circumstances under which they were presented;

(b) The degree of culpability and history of prior offenses of the person presenting the claims;

(c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and

(d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 68-936, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

(iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that the State Treasurer shall distribute civil penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1996, LB 1155, § 70; Laws 1997, LB 307, § 111; R.S.1943, (2003), § 68-1037.04; Laws 2004, LB 1084, § 7; R.S.Supp.,2004, § 68-1079; Laws 2006, LB 1248, § 40; Laws 2007, LB296, § 261.

68-941 Limitation of actions; burden of proof.

(1) A civil action under the False Medicaid Claims Act shall be brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Source: Laws 1996, LB 1155, § 71; R.S.1943, (2003), § 68-1037.05; Laws 2004, LB 1084, § 8; R.S.Supp.,2004, § 68-1080; Laws 2006, LB 1248, § 41.

68-942 Investigation and prosecution.

(1) In any case involving allegations of civil violations or criminal offenses under the False Medicaid Claims Act, the Attorney General may take full charge of any investigation or advancement or prosecution of the case.

(2) The department shall cooperate with the state medicaid fraud control unit in conducting such investigations, civil actions, and criminal prosecutions and shall provide such information for such purposes as may be requested by the Attorney General.

Source: Laws 2004, LB 1084, § 9; R.S.Supp.,2004, § 68-1081; Laws 2006, LB 1248, § 42.

68-943 State medicaid fraud control unit; certification.

The Attorney General shall:

(1) Establish a state medicaid fraud control unit that meets the standards prescribed by 42 U.S.C. 1396b(q); and

(2) Apply to the Secretary of Health and Human Services for certification of the unit under 42 U.S.C. 1396b(q).

Source: Laws 2004, LB 1084, § 10; R.S.Supp.,2004, § 68-1082; Laws 2006, LB 1248, § 43.

68-944 State medicaid fraud control unit; powers and duties.

The state medicaid fraud control unit shall employ such attorneys, auditors, investigators, and other personnel as authorized by law to carry out the duties of the unit in an effective and efficient manner. The purpose of the state medicaid fraud control unit is to conduct a statewide program for the investigation and prosecution of medicaid fraud and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers. The state medicaid fraud control unit may review and act on complaints of abuse and neglect of patients at health care facilities that receive payments under the medical assistance program and may provide for collection or referral for collection of overpayments made under the medical assistance program that are discovered by the unit.

Source: Laws 2004, LB 1084, § 11; R.S.Supp.,2004, § 68-1083; Laws 2006, LB 1248, § 44.

68-945 Attorney General; powers and duties.

In carrying out the duties and responsibilities under the False Medicaid Claims Act, the Attorney General may:

(1) Enter upon the premises of any provider participating in the medical assistance program (a) to examine all accounts and records that are relevant in determining the existence of fraud in the medical assistance program, (b) to investigate alleged abuse or neglect of patients, or (c) to investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent or a court order;

(2) Subpoena witnesses or materials, including medical records relating to recipients, within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings;

(3) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of this section; and

(4) Refer to the department for collection each instance of overpayment to a provider under the medical assistance program which is discovered during the course of an investigation.

Source: Laws 2004, LB 1084, § 12; R.S.Supp.,2004, § 68-1084; Laws 2006, LB 1248, § 45.

68-946 Attorney General; access to records.

(1) Notwithstanding any other provision of law, the Attorney General, upon reasonable request, shall have full access to all records held by a provider, or by any other person on his or her behalf, that are relevant to the determination of (a) the existence of civil violations or criminal offenses under the False Medicaid Claims Act or related offenses, (b) the existence of patient abuse, mistreatment, or neglect, or (c) the theft of patient funds.

(2) In examining such records, the Attorney General shall safeguard the privacy rights of recipients, avoiding unnecessary disclosure of personal information concerning named recipients. The Attorney General may transmit such information as he or she deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(3) No person holding such records may refuse to provide the Attorney General access to such records for the purposes described in the act on the basis that release would violate (a) a recipient's right of privacy, (b) a recipient's privilege against disclosure or use, or (c) any professional or other privilege or right.

Source: Laws 2004, LB 1084, § 13; R.S.Supp.,2004, § 68-1085; Laws 2006, LB 1248, § 46.

68-947 Contempt of court.

Any person who, after being ordered by a court to comply with a subpoena issued under the False Medicaid Claims Act, fails in whole or in part to testify or to produce evidence, documentary or otherwise, shall be in contempt of court as if the failure was committed in the presence of the court. The court may assess a fine of not less than one hundred dollars nor more than one thousand dollars for each day such person fails to comply. No person shall be

found to be in contempt of court nor shall any fine be assessed if compliance with such subpoena violates such person's right against self-incrimination.

Source: Laws 2004, LB 1084, § 14; R.S.Supp.,2004, § 68-1086; Laws 2006, LB 1248, § 47.

68-948 Medicaid Reform Council; established; members; duties; expenses; termination.

(1) The Medicaid Reform Council is established. The council shall consist of ten persons appointed by the chairperson of the committee, in consultation with the committee, the Governor, and the department. The council shall include, but not be limited to, at least one representative from each of the following: Providers, recipients of medical assistance, advocates for such recipients, business representatives, insurers, and elected officials. The chairperson of the committee shall appoint the chairperson of the council. Members of the council may be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The council shall (a) oversee and support implementation of reforms to the medical assistance program, including, but not limited to, reforms such as those contained in the Medicaid Reform Plan, (b) conduct at least two public meetings annually and other meetings at the call of the chairperson of the council, in consultation with the department and the chairperson of the committee, and (c) provide comments and recommendations to the department regarding the administration of the medical assistance program and any proposed changes to such program.

(3) The Medicaid Reform Council and this section terminate on June 30, 2010.

Source: Laws 2006, LB 1248, § 48; Laws 2007, LB296, § 262.
Termination date June 30, 2010.

68-949 Medical assistance program; legislative intent; department; duties; reports.

(1) It is the intent of the Legislature that the department implement reforms to the medical assistance program such as those contained in the Medicaid Reform Plan, including (a) an incremental expansion of home and community-based services for aged persons and persons with disabilities consistent with such plan, (b) an increase in care coordination or disease management initiatives to better manage medical assistance expenditures on behalf of high-cost recipients with multiple or chronic medical conditions, and (c) other reforms as deemed necessary and appropriate by the department, in consultation with the committee and the Medicaid Reform Council.

(2)(a) The department shall develop recommendations based on a comprehensive analysis of various options available to the state under applicable federal law for the provision of medical assistance to persons with disabilities who are employed, including persons with a medically improved disability, to enhance and replace current eligibility provisions contained in subdivision (8) of section 68-915.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2008. The council shall conduct a public meeting no later than October 15, 2008, to

discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1, 2008. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2008.

(3)(a) The department shall develop recommendations for further modification or replacement of the defined benefit structure of the medical assistance program. Such recommendations shall be consistent with the public policy in section 68-905 and shall consider the needs and resources of low-income Nebraska residents who are eligible or may become eligible for medical assistance, the experience and outcomes of other states that have developed and implemented such changes, and other relevant factors as determined by the department.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2008. The council shall conduct a public meeting no later than October 15, 2008, to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1, 2008. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2008.

Source: Laws 2006, LB 1248, § 49; Laws 2007, LB296, § 263; Laws 2008, LB928, § 16.
Operative date July 18, 2008.

68-950 Act, how cited.

Sections 68-950 to 68-956 shall be known and may be cited as the Medicaid Prescription Drug Act.

Source: Laws 2008, LB830, § 2.
Effective date July 18, 2008.

68-951 Purpose of act.

The purpose of the Medicaid Prescription Drug Act is to provide appropriate pharmaceutical care to medicaid recipients in a cost-effective manner by requiring the establishment of a preferred drug list and other activities as prescribed. The preferred drug list and other activities mandated by the act shall not be construed to replace, prohibit, or limit other lawful activities of the department not specifically permitted or required by the act.

Source: Laws 2008, LB830, § 3.
Effective date July 18, 2008.

68-952 Terms, defined.

For purposes of the Medicaid Prescription Drug Act:

(1) Labeler means a person or entity that repackages prescription drugs for retail sale and has a labeler code from the federal Food and Drug Administration under 21 C.F.R. 207.20, as such regulation existed on January 1, 2008;

(2) Manufacturer means a manufacturer of prescription drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section existed on January 1, 2008, including a subsidiary or affiliate of such manufacturer;

(3) Multistate purchasing pool means an entity formed by an agreement between two or more states to negotiate for supplemental rebates on prescription drugs;

(4) Pharmacy benefit manager means a person or entity that negotiates prescription drug price and rebate arrangements with manufacturers or labelers;

(5) Preferred drug list means a list of prescription drugs that may be prescribed for medicaid recipients without prior authorization by the department; and

(6) Prescription drug has the definition found in section 38-2841.

Source: Laws 2008, LB830, § 4.
Effective date July 18, 2008.

68-953 Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.

(1) No later than July 1, 2010, the department shall establish and maintain a preferred drug list for the medical assistance program. The department shall establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of such list.

(2) The pharmaceutical and therapeutics committee shall include at least fifteen but no more than twenty members. The committee shall consist of at least (a) eight physicians, (b) four pharmacists, (c) a university professor of pharmacy or a person with a doctoral degree in pharmacology, and (d) two public members. No more than twenty-five percent of the committee shall be state employees.

(3) The physician members of the committee, so far as practicable, shall include physicians practicing in the areas of (a) family medicine, (b) internal medicine, (c) pediatrics, (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or gynecology, (g) endocrinology, and (h) oncology.

(4) Members of the committee shall submit conflict of interest disclosure statements to the department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

(5) The committee shall elect a chairperson and a vice-chairperson from among its members. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The department, in consultation with the committee, shall adopt and publish policies and procedures relating to the preferred drug list, including (a) guidelines for the presentation and review of drugs for inclusion on the preferred drug list, (b) the manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost effectiveness, (c) an appeals process for the resolution of disputes, and (d) such other policies and procedures as the department deems necessary and appropriate.

Source: Laws 2008, LB830, § 5.
Effective date July 18, 2008.

68-954 Preferred drug list; considerations; availability of list.

(1) The department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the

preferred drug list, except that antidepressant, antipsychotic, and anticonvulsant prescription drugs shall not be subject to consideration for inclusion on the preferred drug list.

(2)(a) The department shall include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net cost of the listed drug, after consideration of applicable rebates or discounts negotiated by the department.

(b) If the department finds that two or more prescription drugs under consideration for inclusion on the preferred drug list are therapeutically equivalent, the department shall include the more cost-effective prescription drug or drugs on the preferred drug list, after consideration of applicable rebates or discounts negotiated by the department.

(3) The department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the department's Internet web site.

Source: Laws 2008, LB830, § 6.
Effective date July 18, 2008.

68-955 Prescription of drug not on preferred drug list; conditions.

(1) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient if (a) the prescription drug is medically necessary, (b)(i) the provider certifies that the preferred drug has not been therapeutically effective, or with reasonable certainty is not expected to be therapeutically effective, in treating the recipient's condition or (ii) the preferred drug causes or is reasonably expected to cause adverse or harmful reactions in the recipient, and (c) the department authorizes coverage for the prescription drug prior to the dispensing of the drug. The department shall respond to a prior authorization request no later than twenty-four hours after receiving such request.

(2) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient without prior authorization by the department if the provider certifies that (a) the recipient is achieving therapeutic success with a course of antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b) the recipient has experienced a prior therapeutic failure with a medication.

Source: Laws 2008, LB830, § 7.
Effective date July 18, 2008.

68-956 Department; duties.

The department shall: (1) Enter into a multistate purchasing pool; (2) negotiate directly with manufacturers or labelers; or (3) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program in order to achieve the lowest available price for such drugs under such program.

Source: Laws 2008, LB830, § 8.
Effective date July 18, 2008.

ARTICLE 10

ASSISTANCE, GENERALLY

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section

68-1001.01. Department of Health and Human Services; rules and regulations; promulgate.
68-1002. Persons eligible for assistance.
68-1007. Determination of need; elements considered; amounts disregarded.
68-1008. Application for assistance; investigation; notification.
68-1014. Assistance; payment to guardian or conservator; when authorized.

(b) PROCEDURE AND PENALTIES

68-1015. Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.
68-1016. Assistance; appeals; procedure.
68-1017. Assistance; violations; penalties.
68-1017.02. Food stamp benefits; department; duties; report; contents; person ineligible; when.

(c) MEDICAL ASSISTANCE

68-1018. Transferred to section 68-903.
68-1019. Transferred to section 68-911.
68-1019.01. Transferred to section 68-912.
68-1019.02. Repealed. Laws 2006, LB 1248, § 92.
68-1019.03. Repealed. Laws 2006, LB 1248, § 92.
68-1019.04. Repealed. Laws 2006, LB 1248, § 92.
68-1019.05. Repealed. Laws 2006, LB 1248, § 92.
68-1019.06. Repealed. Laws 2006, LB 1248, § 92.
68-1019.09. Repealed. Laws 2006, LB 1248, § 92.
68-1020. Transferred to section 68-915.
68-1021. Transferred to section 68-906.
68-1021.01. Repealed. Laws 2006, LB 1248, § 92.
68-1022. Transferred to section 68-910.
68-1023. Transferred to section 68-908.
68-1024. Repealed. Laws 2006, LB 1248, § 92.
68-1025. Repealed. Laws 2006, LB 1248, § 92.
68-1025.01. Transferred to section 68-913.
68-1026. Transferred to section 68-916.
68-1027. Transferred to section 68-917.
68-1028. Transferred to section 68-918.
68-1029. Repealed. Laws 2006, LB 1248, § 92.
68-1030. Repealed. Laws 2006, LB 1248, § 92.
68-1031. Repealed. Laws 2006, LB 1248, § 92.
68-1033. Repealed. Laws 2006, LB 1248, § 92.
68-1034. Repealed. Laws 2006, LB 1248, § 92.
68-1035. Repealed. Laws 2006, LB 1248, § 92.
68-1035.01. Repealed. Laws 2006, LB 1248, § 92.
68-1036. Repealed. Laws 2006, LB 1248, § 92.
68-1036.02. Transferred to section 68-919.
68-1036.03. Transferred to section 68-920.
68-1037. Repealed. Laws 2006, LB 1248, § 92.
68-1037.01. Transferred to section 68-1073.
68-1037.02. Transferred to section 68-1074.
68-1037.03. Transferred to section 68-1075.
68-1037.04. Transferred to section 68-1079.
68-1037.05. Transferred to section 68-1080.

(d) ENTITLEMENT OF SPOUSE

68-1038. Transferred to section 68-921.
68-1039. Transferred to section 68-922.

Section
68-1097. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1098. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1099. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

68-10,100. Transferred to section 68-926.
68-10,101. Transferred to section 68-927.
68-10,102. Transferred to section 68-928.
68-10,103. Transferred to section 68-929.
68-10,104. Transferred to section 68-930.
68-10,105. Transferred to section 68-931.
68-10,106. Transferred to section 68-932.
68-10,107. Transferred to section 68-933.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

68-1001.01 Department of Health and Human Services; rules and regulations; promulgate.

For the purpose of adding to the security and social adjustment of former and potential recipients of assistance to the aged, blind, and disabled, and of medical assistance, the Department of Health and Human Services is authorized to promulgate rules and regulations providing for services to such persons.

Source: Laws 1969, c. 558, § 1, p. 2274; Laws 1996, LB 1044, § 305; Laws 2007, LB296, § 264.

68-1002 Persons eligible for assistance.

In order to qualify for assistance to the aged, blind, or disabled, an individual:

(1) Must be a bona fide resident of the State of Nebraska, except that a resident of another state who enters the State of Nebraska solely for the purpose of receiving care in a home licensed by the Department of Health and Human Services shall not be deemed to be a bona fide resident of Nebraska while such care is being provided;

(2) Shall not be receiving care or services as an inmate of a public institution, except as a patient in a medical institution, and if the individual is a patient in an institution for tuberculosis or mental diseases, he or she has attained the age of sixty-five years;

(3) Shall not have deprived himself or herself directly or indirectly of any property whatsoever for the purpose of qualifying for assistance to the aged, blind, or disabled;

(4) May receive care in a public or private institution only if such institution is subject to a state authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and

(5) Must be in need of shelter, maintenance, or medical care.

Source: Laws 1965, c. 395, § 2, p. 1264; Laws 1965, c. 396, § 1, p. 1274; Laws 1965, c. 397, § 1, p. 1276; Laws 1967, c. 409, § 2, p. 1273; Laws 1969, c. 343, § 5, p. 1208; Laws 1977, LB 480, § 1; Laws 1996, LB 1044, § 306; Laws 2007, LB296, § 265.

68-1007 Determination of need; elements considered; amounts disregarded.

In determining need for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall take into consideration all other income and resources of the individual claiming such assistance, as well as any expenses reasonably attributable to the earning of any such income, except as otherwise provided in this section. In making such determination with respect to any individual who is blind, there shall be disregarded the first eighty-five dollars per month of earned income plus one-half of earned income in excess of eighty-five dollars per month and, for a period not in excess of twelve months, such additional amounts of other income and resources, in the case of an individual who has an approved plan for achieving self-support, as may be necessary for the fulfillment of such plan. In making such determination with respect to an individual who has attained age sixty-five, or who is permanently and totally disabled, and is claiming aid to the aged, blind, or disabled, the department shall disregard earned income at least to the extent such income was disregarded on January 1, 1972, as provided in 42 U.S.C. 1396a(f).

Source: Laws 1965, c. 395, § 7, p. 1266; Laws 1967, c. 411, § 1, p. 1275; Laws 1969, c. 539, § 1, p. 2189; Laws 1972, LB 760, § 1; Laws 1982, LB 522, § 37; Laws 1987, LB 255, § 1; Laws 1996, LB 1044, § 309; Laws 2007, LB296, § 266.

Cross References

Available resources, computation, see section 68-129.

68-1008 Application for assistance; investigation; notification.

Upon the filing of an application for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall make such investigation as it deems necessary to determine the circumstances existing in each case. Each applicant and recipient shall be notified in writing as to (1) the approval or disapproval of any application, (2) the amount of payments awarded, (3) any change in the amount of payments awarded, and (4) the discontinuance of payments.

Source: Laws 1965, c. 395, § 8, p. 1267; Laws 1967, c. 253, § 2, p. 673; Laws 1977, LB 312, § 8; Laws 1982, LB 522, § 38; Laws 1996, LB 1044, § 310; Laws 2007, LB296, § 267.

68-1014 Assistance; payment to guardian or conservator; when authorized.

If any guardian or conservator shall have been appointed to take charge of the property of any recipient of assistance to the aged, blind, or disabled, aid to dependent children, or medical assistance, such assistance payments shall be made to the guardian or conservator upon his or her filing with the Department of Health and Human Services a certified copy of his or her letters of guardianship or conservatorship.

Source: Laws 1965, c. 394, § 2, p. 1261; Laws 1982, LB 522, § 39; Laws 1996, LB 1044, § 311; Laws 2007, LB296, § 268.

(b) PROCEDURE AND PENALTIES

68-1015 Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.

For the purpose of any investigation or hearing, the chief executive officer of the Department of Health and Human Services and the division directors

appointed pursuant to section 81-3115, through authorized agents, shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers. Witnesses may be examined on oath or affirmation.

Source: Laws 1965, c. 394, § 3, p. 1262; Laws 1982, LB 522, § 40; Laws 1996, LB 1044, § 312; Laws 2007, LB296, § 269.

68-1016 Assistance; appeals; procedure.

The chief executive officer of the Department of Health and Human Services, or his or her designated representative, shall provide for granting an opportunity for a fair hearing to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or food stamp benefits is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the department a written notice of appeal setting forth the facts on which the appeal is based. The department shall thereupon, in writing, notify the appellant of the time and place for hearing which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the duly authorized agent of the department. On the basis of evidence adduced, the duly authorized agent shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Source: Laws 1965, c. 394, § 4, p. 1262; Laws 1969, c. 540, § 1, p. 2190; Laws 1982, LB 522, § 41; Laws 1989, LB 362, § 9; Laws 1996, LB 1044, § 313; Laws 1998, LB 1073, § 57; Laws 2007, LB296, § 270.

68-1017 Assistance; violations; penalties.

Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (1) an assistance certificate of award to which he or she is not entitled, (2) any commodity, any foodstuff, any food coupon, any food stamp coupon, electronic benefit, or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (3) any payment made on behalf of a recipient of medical assistance or social services, or (4) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense and shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996, LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271.

68-1017.02 Food stamp benefits; department; duties; report; contents; person ineligible; when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal food stamp program and regulations adopted under such program to maximize the number of Nebraska residents being served under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall report annually to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal food stamp program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on July 18, 2008, that eliminates eligibility for food stamps for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for food stamp benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive food stamp benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1.
Effective date July 18, 2008.

(c) MEDICAL ASSISTANCE

68-1018 Transferred to section 68-903.

68-1019 Transferred to section 68-911.

68-1019.01 Transferred to section 68-912.

68-1019.02 Repealed. Laws 2006, LB 1248, § 92.

68-1019.03 Repealed. Laws 2006, LB 1248, § 92.

68-1019.04 Repealed. Laws 2006, LB 1248, § 92.

68-1019.05 Repealed. Laws 2006, LB 1248, § 92.

68-1019.06 Repealed. Laws 2006, LB 1248, § 92.

68-1019.09 Repealed. Laws 2006, LB 1248, § 92.

68-1020 Transferred to section 68-915.

68-1021 Transferred to section 68-906.

68-1021.01 Repealed. Laws 2006, LB 1248, § 92.

68-1022 Transferred to section 68-910.

68-1023 Transferred to section 68-908.

68-1024 Repealed. Laws 2006, LB 1248, § 92.

68-1025 Repealed. Laws 2006, LB 1248, § 92.

68-1025.01 Transferred to section 68-913.

68-1026 Transferred to section 68-916.

68-1027 Transferred to section 68-917.

68-1028 Transferred to section 68-918.

68-1029 Repealed. Laws 2006, LB 1248, § 92.

68-1030 Repealed. Laws 2006, LB 1248, § 92.

68-1031 Repealed. Laws 2006, LB 1248, § 92.

68-1033 Repealed. Laws 2006, LB 1248, § 92.

68-1034 Repealed. Laws 2006, LB 1248, § 92.

68-1035 Repealed. Laws 2006, LB 1248, § 92.

68-1035.01 Repealed. Laws 2006, LB 1248, § 92.

68-1036 Repealed. Laws 2006, LB 1248, § 92.

68-1036.02 Transferred to section 68-919.

68-1036.03 Transferred to section 68-920.

68-1037 Repealed. Laws 2006, LB 1248, § 92.

68-1037.01 Transferred to section 68-1073.

68-1037.02 Transferred to section 68-1074.

68-1037.03 Transferred to section 68-1075.

68-1037.04 Transferred to section 68-1079.

68-1037.05 Transferred to section 68-1080.

(d) ENTITLEMENT OF SPOUSE

68-1038 Transferred to section 68-921.

68-1039 Transferred to section 68-922.

68-1040 Transferred to section 68-923.

68-1042 Transferred to section 68-924.

68-1043 Transferred to section 68-925.

(f) MANAGED CARE PLAN

68-1048 Repealed. Laws 2006, LB 1248, § 92.

68-1049 Repealed. Laws 2006, LB 1248, § 92.

68-1050 Repealed. Laws 2006, LB 1248, § 92.

68-1051 Repealed. Laws 2006, LB 1248, § 92.

68-1056 Repealed. Laws 2006, LB 1248, § 92.

68-1057 Repealed. Laws 2006, LB 1248, § 92.

68-1058 Repealed. Laws 2006, LB 1248, § 92.

68-1059 Repealed. Laws 2006, LB 1248, § 92.

68-1060 Repealed. Laws 2006, LB 1248, § 92.

68-1061 Repealed. Laws 2006, LB 1248, § 92.

68-1062 Repealed. Laws 2006, LB 1248, § 92.

68-1063 Repealed. Laws 2006, LB 1248, § 92.

68-1064 Repealed. Laws 2005, LB 301, § 78.

(g) MEDICAID RECIPIENTS PARTICIPATING IN MANAGED CARE PLAN

68-1067 Repealed. Laws 2006, LB 1248, § 92.

68-1068 Repealed. Laws 2006, LB 1248, § 92.

68-1069 Repealed. Laws 2006, LB 1248, § 92.

(h) NON-UNITED-STATES CITIZENS

68-1070 Non-United-States citizens; assistance; eligibility.

(1) If the following non-United-States citizens meet the income and other requirements for participation in the medical assistance program established

pursuant to the Medical Assistance Act, in the program for financial assistance pursuant to section 43-512, in the food stamp program administered by the State of Nebraska pursuant to the federal Food Stamp Act, or in the program for assistance to the aged, blind, and disabled, such persons shall be eligible for such program or benefits:

(a) Non-United-States citizens lawfully admitted, regardless of the date entry was granted, into the United States for permanent residence;

(b) Refugees admitted under section 207 of the federal Immigration and Naturalization Act, non-United-States citizens granted asylum under section 208 of such federal act, and non-United-States citizens whose deportation is withheld under section 243(h) of such federal act, regardless of the date of entry into the United States; and

(c) Individuals for whom coverage is mandated under federal law.

(2) Individuals eligible for food stamp assistance under this section shall receive any food stamp coupons or electronic benefits or a state voucher which can be used only for food products authorized under the federal Food Stamp Act, in the amount of the food stamp benefit for which this individual was otherwise eligible but for the citizenship provisions of Public Law 104-193, 110 Stat. 2105 (1996).

(3) The income and resources of any individual who assists a non-United-States citizen to enter the United States by signing an affidavit of support shall be deemed available in determining the non-United-States citizen's eligibility for assistance until the non-United-States citizen becomes a United States citizen.

Source: Laws 1997, LB 864, § 6; Laws 1998, LB 1073, § 61; Laws 2006, LB 1248, § 70.

Cross References

Medical Assistance Act, see section 68-901.

(i) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

68-1071 Repealed. Laws 2006, LB 1248, § 92.

68-1072 Repealed. Laws 2006, LB 1248, § 92.

(j) FALSE MEDICAID CLAIMS ACT

68-1073 Transferred to section 68-934.

68-1074 Transferred to section 68-935.

68-1075 Transferred to section 68-936.

68-1076 Transferred to section 68-937.

68-1077 Transferred to section 68-938.

68-1078 Transferred to section 68-939.

68-1079 Transferred to section 68-940.

68-1080 Transferred to section 68-941.

68-1081 Transferred to section 68-942.

68-1082 Transferred to section 68-943.

68-1083 Transferred to section 68-944.

68-1084 Transferred to section 68-945.

68-1085 Transferred to section 68-946.

68-1086 Transferred to section 68-947.

(k) MEDICAID REFORM ACT

68-1087 Repealed. Laws 2006, LB 1248, § 92.

68-1088 Repealed. Laws 2006, LB 1248, § 92.

68-1089 Repealed. Laws 2006, LB 1248, § 92.

68-1090 Repealed. Laws 2006, LB 1248, § 92.

68-1091 Repealed. Laws 2006, LB 1248, § 92.

68-1092 Repealed. Laws 2006, LB 1248, § 92.

68-1093 Repealed. Laws 2006, LB 1248, § 92.

68-1094 Repealed. Laws 2006, LB 1248, § 92.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

68-1095 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1095.01 Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.

The Long-Term Care Partnership Program is established. The program shall be administered by the Department of Health and Human Services in accordance with federal requirements on state long-term care partnership programs. In order to implement the program, the department shall file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to the requirements set forth in 42 U.S.C. 1396p(b), as such section existed on March 1, 2006.

Source: Laws 2006, LB 965, § 7; Laws 2007, LB296, § 272.

68-1096 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1097 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1098 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1099 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

68-10,100 Transferred to section 68-926.

68-10,101 Transferred to section 68-927.

68-10,102 Transferred to section 68-928.

68-10,103 Transferred to section 68-929.

68-10,104 Transferred to section 68-930.

68-10,105 Transferred to section 68-931.

68-10,106 Transferred to section 68-932.

68-10,107 Transferred to section 68-933.

ARTICLE 11

DEPARTMENT ON AGING ADVISORY COMMITTEE

Section

68-1101 Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging is created. The committee shall consist of twelve members, one from each of the planning-and-service areas as designated in the Nebraska Community Aging Services Act and the remaining members from the state at large.

Any member serving on the Department of Health and Human Services Advisory Committee on Aging on July 1, 2007, shall continue to serve until his or her term expires. As the terms of the members expire, the Governor shall, on or before March 1 of such year, appoint or reappoint a member of the committee for a term of four years. Each area agency on aging serving a designated planning-and-service area shall recommend to the Governor the names of persons qualified to represent the senior population of the planning-and-service area. Any vacancy on the committee shall be filled for the unexpired term. A vacancy shall exist when a member of the committee ceases to be a resident of the planning-and-service area from which he or she was appointed or reappointed. The members to be appointed to represent a planning-and-service area shall be residents of the planning-and-service area from which they are appointed. Members of the advisory committee shall not be elected public officials or staff of the Department of Health and Human Services or of an area agency on aging.

Source: Laws 1965, c. 409, § 1, p. 1311; Laws 1971, LB 97, § 1; Laws 1982, LB 404, § 30; Laws 1987, LB 456, § 1; Laws 1996, LB 1044, § 341; Laws 2007, LB296, § 273.

Cross References

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

68-1103 Committee; officers; meetings.

Members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging shall meet within thirty days after their appointment to select from the members of the committee a chairperson, and such other officers as committee members deem necessary, who shall serve for a period of two years. The committee shall elect a new chairperson every two years thereafter. The committee shall meet at regular intervals at least once each year and may hold special meetings at the call of the chairperson or at the request of a majority of the members of the committee. The committee shall meet at the seat of government or such other place as the members of the committee may designate.

Source: Laws 1965, c. 409, § 3, p. 1312; Laws 1971, LB 97, § 2; Laws 1982, LB 404, § 31; Laws 1996, LB 1044, § 342; Laws 2007, LB296, § 274.

68-1104 Committee; duties.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging shall advise the Division of Medicaid and Long-Term Care of the Department of Health and Human Services regarding:

(1) The collection of facts and statistics and special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment, or other conditions and problems pertaining to the general welfare of the aging of the state;

(2) Recommendations to state and local agencies serving the aging for purposes of coordinating such agencies' activities, and reports from the various state agencies and institutions on matters within the jurisdiction of the committee;

(3) The latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging;

(4) The mutual exchange of ideas and information on the aging between federal, state, and local governmental agencies, private organizations, and individuals; and

(5) Cooperation with agencies, federal, state, and local or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

The committee shall have the power to create special committees to undertake such special studies as members of the committee shall authorize and may include noncommittee members who are qualified in any field of activity related to the general welfare of the aging in the membership of such committees.

Source: Laws 1965, c. 409, § 4, p. 1313; Laws 1971, LB 97, § 3; Laws 1981, LB 545, § 20; Laws 1982, LB 404, § 32; Laws 1996, LB 1044, § 343; Laws 2007, LB296, § 275.

68-1105 Committee; special committees; members; compensation.

The members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, and noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement

for actual and necessary expenses as provided in sections 81-1174 to 81-1177. Committee expenses and any office expenses shall be paid from funds made available to the committee by the Legislature.

Source: Laws 1965, c. 409, § 5, p. 1314; Laws 1971, LB 97, § 4; Laws 1974, LB 660, § 4; Laws 1981, LB 204, § 104; Laws 1982, LB 404, § 33; Laws 1996, LB 1044, § 344; Laws 2007, LB296, § 276.

ARTICLE 12
SOCIAL SERVICES

Section
68-1202. Social services; services included.
68-1204. Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.
68-1205. Matching funds.
68-1206. Social services; administration; contracts; payments.
68-1207. Department of Health and Human Services; public child welfare services; supervise; caseload requirements.
68-1207.01. Department of Health and Human Services; caseloads report; contents.
68-1210. Department of Health and Human Services; certain foster care children; payment rates.

68-1202 Social services; services included.

Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as such act existed on September 4, 2005, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

Source: Laws 1973, LB 511, § 2; Laws 1986, LB 1177, § 28; Laws 2000, LB 819, § 82; Laws 2005, LB 264, § 1.

68-1204 Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.

(1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as such act existed on July 1, 2006. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as such title

existed on July 1, 2006, designated for specialized developmental disability services.

Source: Laws 1973, LB 511, § 4; Laws 1991, LB 830, § 31; Laws 1996, LB 1044, § 345; Laws 2006, LB 994, § 66; Laws 2007, LB296, § 277.

68-1205 Matching funds.

The matching funds required to obtain the federal share of the services described in section 68-1202 may come from either state, county, or donated sources in amounts and other provisions to be determined by the Department of Health and Human Services.

Source: Laws 1973, LB 511, § 5; Laws 1996, LB 1044, § 346; Laws 2006, LB 994, § 67; Laws 2007, LB296, § 278.

68-1206 Social services; administration; contracts; payments.

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services.

(2) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279.

68-1207 Department of Health and Human Services; public child welfare services; supervise; caseload requirements.

The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department shall establish and maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. In establishing the standards for such caseloads, the department shall (1) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (2) consider workload standards recommended by national child welfare organizations and factors related to the attainment of such standards.

The department shall consult with the appropriate employee representative in establishing such standards.

To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280.

68-1207.01 Department of Health and Human Services; caseloads report; contents.

The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. Such report shall include:

(1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;

(2)(a) The number of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by health and human services area;

(3)(a) The average caseload of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by health and human services area; and

(4) The average cost of training child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by health and human services area.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281.

68-1210 Department of Health and Human Services; certain foster care children; payment rates.

Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish

payment rates for children with special needs who are in foster care and in the custody of the department.

Source: Laws 1990, LB 1022, § 1; Laws 1996, LB 1044, § 350; Laws 2007, LB296, § 282.

ARTICLE 14

GENETICALLY HANDICAPPED PERSONS

Section
68-1402. Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.
68-1403. Genetically handicapped persons; medical care program; services and treatment included.
68-1405. Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.

68-1402 Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.

The Department of Health and Human Services shall establish and administer a program for the medical care of persons of all ages with genetically handicapping conditions, including cystic fibrosis, hemophilia, and sickle cell disease, through physicians and health care providers that are qualified pursuant to the regulations of the department to provide such medical services. The department shall adopt such rules and regulations pursuant to the Administrative Procedure Act, as are necessary for the implementation of the provisions of the Genetically Handicapped Persons Act. The department shall establish priorities for the use of funds and provision of services under the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 2; Laws 1996, LB 1044, § 351; Laws 2006, LB 994, § 69; Laws 2007, LB296, § 283.

Cross References

Administrative Procedure Act, see section 84-920.

68-1403 Genetically handicapped persons; medical care program; services and treatment included.

The program established under the Genetically Handicapped Persons Act, which shall be under the supervision of the Department of Health and Human Services, shall include any or all of the following:

(1) Initial intake and diagnostic evaluation;

(2) The cost of blood transfusion and use of blood derivatives, or both;

(3) Rehabilitation services, including reconstructive surgery;

(4) Expert diagnosis;

(5) Medical treatment;

(6) Surgical treatment;

(7) Hospital care;

(8) Physical therapy;

(9) Occupational therapy;

(10) Materials and prescription drugs;

(11) Appliances and their upkeep, maintenance, and care;

(12) Maintenance, transportation, or care incidental to any other form of services; and

(13) Appropriate and sufficient staff to carry out the provisions of the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 3; Laws 1996, LB 1044, § 352; Laws 2006, LB 994, § 70; Laws 2007, LB296, § 284.

68-1405 Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.

The Department of Health and Human Services shall establish uniform standards of financial eligibility for the treatment services under the program established under the Genetically Handicapped Persons Act, including a uniform formula for the payment of services by physicians and health care providers rendered under such program and such formula for payment shall provide for reimbursement at rates similar to those set by other federal and state programs, and private entitlements. The standards of the department for financial eligibility shall be the same as those established for Medically Handicapped Children's Services, as administered by the department. All county or district health departments shall use the uniform standards for financial eligibility and uniform formula for payment established by the department. All payments shall be used in support of the program for services established under the act.

The department shall establish payment schedules for services.

Source: Laws 1980, LB 989, § 5; Laws 1985, LB 249, § 5; Laws 1996, LB 1044, § 353; Laws 2006, LB 994, § 71; Laws 2007, LB296, § 285.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

68-1503 Terms, defined.

For purposes of the Disabled Persons and Family Support Act:

(1) Department means the Department of Health and Human Services;

(2) Disabled family member or disabled person means a person who has a medically determinable severe, chronic disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, (vii) work skills or work tolerance, and (viii) economic sufficiency; and

(d) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, vocational rehabilitation, or other services which are of lifelong or extended duration and are individually planned and coordinated; and

(3) Other support programs means all forms of local, state, or federal assistance, grants-in-aid, educational programs, or support provided by public or private funds for disabled persons or their families.

Source: Laws 1981, LB 389, § 3; Laws 1996, LB 1044, § 354; Laws 2006, LB 994, § 72; Laws 2007, LB296, § 286.

68-1509 Department; needs and eligibility criteria; factors.

The department, in considering the needs and eligibility criteria of families and disabled persons, shall consider various factors, including, but not limited to:

(1) Total family income, except that the amount which the spouse may designate as provided in section 68-922 shall be excluded in determining total family income per month;

(2) The cost of providing supplemental services to the family or the disabled person;

(3) The need for each program or service received by the family or the disabled person;

(4) The eligibility of the family or the disabled person for other support programs;

(5) The costs of providing for the family or the disabled person in an independent living situation, notwithstanding the special circumstances of providing for a disabled person;

(6) The number of persons in the family; and

(7) The availability of insurance to cover the cost of needed programs and services.

If assets have been designated for an individual in accordance with section 68-922, such assets shall not be considered in determining the eligibility for support of the individual's disabled spouse.

Source: Laws 1981, LB 389, § 9; Laws 1988, LB 419, § 16; Laws 1989, LB 362, § 16; Laws 2006, LB 1248, § 71.

68-1514 Denial of support; hearing provided.

The chief executive officer of the department, or his or her designated representative, shall provide an opportunity for a fair hearing to any family or disabled person who is denied support pursuant to the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 14; Laws 1996, LB 1044, § 355; Laws 2006, LB 994, § 73; Laws 2007, LB296, § 287.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

68-1521 Terms, defined.

For purposes of sections 68-1520 to 68-1528:

(1) Caregiver means an individual providing ongoing care for an individual unable to care for himself or herself;

(2) Community lifespan respite services program means a noncategorical respite services program that:

(a) Is operated by a community-based private nonprofit or for-profit agency or a public agency that provides respite services;

(b) Receives funding through the Nebraska Lifespan Respite Services Program established under section 68-1522;

(c) Serves an area in one or more of the six regional services areas of the department;

(d) Acts as a single local source for respite services information and referral; and

(e) Facilitates access to local respite services;

(3) Department means the Department of Health and Human Services;

(4) Noncategorical care means care without regard to the age, type of special needs, or other status of the individual receiving care;

(5) Provider means an individual or agency selected by a family or caregiver to provide respite services to an individual with special needs;

(6) Respite care means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs; and

(7) Respite services includes:

(a) Recruiting and screening of paid and unpaid respite care providers;

(b) Identifying local training resources and organizing training opportunities for respite care providers;

(c) Matching of families and caregivers with providers and other types of respite care;

(d) Linking families and caregivers with payment resources;

(e) Identifying, coordinating, and developing community resources for respite services;

(f) Quality assurance and evaluation; and

(g) Assisting families and caregivers to identify respite care needs and resources.

Source: Laws 1999, LB 148, § 2; Laws 2006, LB 994, § 74; Laws 2007, LB296, § 288.

68-1522 Nebraska Lifespan Respite Services Program; established.

The department shall establish the Nebraska Lifespan Respite Services Program to develop and encourage statewide coordination of respite services and to work with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups in the establishment of community lifespan respite services programs. The Nebraska Lifespan Respite Services Program shall:

(1) Provide policy and program development support, including, but not limited to, data collection and outcome measures;

(2) Identify and promote resolution of local and state-level policy concerns;

(3) Provide technical assistance to community lifespan respite services programs;

(4) Develop and distribute respite services information;

(5) Promote the exchange of information and coordination among state and local governments, community lifespan respite services programs, agencies serving individuals unable to care for themselves, families, and respite care advocates to encourage efficient provision of respite services and reduce duplication of effort;

(6) Ensure statewide access to community lifespan respite services programs; and

(7) Monitor and evaluate implementation of community lifespan respite services programs.

Source: Laws 1999, LB 148, § 3; Laws 2006, LB 994, § 75; Laws 2007, LB296, § 289.

68-1523 Program; administration.

(1) The department, through the Nebraska Lifespan Respite Services Program, shall coordinate the establishment of community lifespan respite services programs. The program shall accept proposals submitted in the form and manner required by the program from community-based private nonprofit or for-profit agencies or public agencies that provide respite services to operate community lifespan respite services programs. According to criteria established by the department, the Nebraska Lifespan Respite Services Program shall designate and fund agencies described in this section to operate community lifespan respite services programs.

(2) The department shall create the position of program specialist for the Nebraska Lifespan Respite Services Program to administer the program.

Source: Laws 1999, LB 148, § 4; Laws 2006, LB 994, § 76; Laws 2007, LB296, § 290.

ARTICLE 16

HOMELESS SHELTER ASSISTANCE

Section
68-1604. Homeless Shelter Assistance Trust Fund; created; use; investment.

68-1604 Homeless Shelter Assistance Trust Fund; created; use; investment.

The Homeless Shelter Assistance Trust Fund is hereby created. The fund shall include the proceeds raised from the documentary stamp tax and remitted for such fund pursuant to section 76-903. Money remitted to such fund shall be used by the department (1) for grants to eligible shelter providers as set out in section 68-1605 for the purpose of assisting in the alleviation of homelessness, to provide temporary and permanent shelters for homeless persons, to encourage the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and to address the needs of the migrant farmworker and (2) to aid in defraying the expenses of administering

the Homeless Shelter Assistance Trust Fund Act, which shall not exceed seventy-five thousand dollars in any fiscal year.

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 1992, LB 1192, § 4; Laws 1994, LB 1066, § 62; Laws 2001, LB 516, § 2; Laws 2005, LB 301, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

(b) GOVERNOR'S ROUNDTABLE

(a) WELFARE REFORM ACT

68-1709 Legislative findings and declarations.

The Legislature finds and declares that the primary purpose of the welfare programs in this state is to provide temporary, transitional support for Nebraska families so that economic self-sufficiency is attained in as expeditious a manner as possible. The Legislature further finds and declares that this goal is to be accomplished through individualized assessments of the personal and economic resources of each applicant for public assistance and through the use of individualized self-sufficiency contracts.

The Legislature further finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support,

stabilize, and enhance individual and family life in Nebraska by: (1) Pursuing efforts to help Nebraskans avoid poverty and prevent the need for welfare; (2) eliminating existing complex and conflicting welfare programs; (3) creating a simplified program in place of the existing complex and conflicting welfare programs; (4) removing disincentives to work and promoting economic self-sufficiency; (5) providing individuals and families the support needed to move from public assistance to economic self-sufficiency; (6) changing public assistance from entitlements to temporary, contract-based support; (7) removing barriers to public assistance for intact families; (8) basing the duration of public assistance upon the individual circumstances of each applicant within the time limits allowed under federal law; (9) providing continuing assistance and support for persons sixty-five years of age or over and for individuals and families with physical, mental, or intellectual limitations preventing total economic self-sufficiency; (10) supporting regular school attendance of children; and (11) promoting public sector, private sector, individual, and family responsibility.

Source: Laws 1994, LB 1224, § 9; Laws 2007, LB351, § 4.

68-1710 Legislative intent.

It is the intent of the Legislature that, with the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, the Department of Health and Human Services implement the Welfare Reform Act in a manner consistent with federal law.

Source: Laws 1997, LB 864, § 12; Laws 2007, LB351, § 5.

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.

(1) The Department of Health and Human Services shall implement the following policies:

(a) Permit Work Experience in Private for-Profit Enterprises;

(b) Permit Job Search;

(c) Permit Employment to be Considered a Program Component;

(d) Make Sanctions More Stringent to Emphasize Participant Obligations;

(e) Alternative Hearing Process;

(f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;

(g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;

(h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;

(i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;

(j) Require Adults to Ensure that Children in the Family Unit Attend School;

(k) Encourage Minor Parents to Live with Their Parents;

(l) Establish a Resource Limit of $4,000 for a single individual and $6,000 for two or more individuals for ADC;

(m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;

(n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;

(o) Establish Food Stamps as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;

(p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;

(q) Adopt an Earned Income Disregard of Twenty Percent of Gross Earnings in the ADC Program and One Hundred Dollars in the Related Medical Assistance Program;

(r) Disregard Financial Assistance Received Intended for Books, Tuition, or Other Self-Sufficiency Related Use;

(s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility; and

(t) Make ADC a Time-Limited Program.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6.

68-1716 Repealed. Laws 2005, LB 301, § 78.

68-1718 Financial assistance; comprehensive assets assessment required; contents; periodic assessments.

(1) At the time an individual or a family applies for financial assistance pursuant to section 43-512, an assessment shall be conducted. Eligibility determination shall begin with a comprehensive assets assessment, in which the applicant and case manager collaborate to identify the economic and personal resources available to the applicant. Each applicant shall work with only one case manager who shall facilitate all service provision.

(2) Each applicant's personal resources shall be assessed in the comprehensive assets assessment. For purposes of this section, personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment

background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.

(3) The comprehensive assets assessment shall structure personal resources information and control subjectivity. The assessment shall be used:

(a) To develop a self-sufficiency contract under section 68-1719 and promote services which specifically lead to self-sufficiency; and

(b) To determine if the applicant should be referred to other community resources for assistance.

(4) Periodic assessments, including an exit assessment prior to implementation of the time limit on cash assistance as provided in section 68-1724, shall be conducted with recipients to establish if the terms of the self-sufficiency contract have been met by the recipient family and by the state.

Source: Laws 1994, LB 1224, § 18; Laws 1997, LB 864, § 14; Laws 2007, LB351, § 7.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties.

(1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8.

68-1722 Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when.

The Legislature finds that the state has responsibilities to help ensure the success of the self-sufficiency contract for each recipient. The Department of Health and Human Services shall employ case management practices and supportive services to the extent necessary to facilitate movement toward self-sufficiency within the time limit on participation as provided in section 68-1724.

The department may purchase case management services. It is the intent of the Legislature that any case management utilized by the department shall include standards which emphasize communication skills; appropriate interviewing techniques; and methods for positive feedback, support, encouragement, and counseling. The case management provided shall also include a recognition of family dynamics and emphasize working with all family members; shall respect diversity; shall empower individuals; and shall include recognizing, capitalizing, and building on a family's strengths and existing support network. It is the intent of the Legislature that generally a case manager would have a family caseload of no more than seventy cases.

Supportive services shall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting, and relocation to provide for specific needs critical to the recipient's or the recipient family's self-sufficiency contract. For purposes of this section, family planning shall not include abortion counseling, referral for abortion, or funding for abortion. If the state fails to meet the specific terms of the self-sufficiency contract, the time limit on cash assistance under section 68-1724 shall be extended.

Source: Laws 1994, LB 1224, § 22; Laws 1996, LB 1044, § 361; Laws 2007, LB351, § 9.

68-1723 Cash assistance; requirements; extension of time limit; when; hearing; review.

(1) Cash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract developed under section 68-1719. If the recipients are not actively engaged in these activities, no cash assistance shall be paid.

(2) Recipient families with at least one adult with the capacity to work, as determined by the comprehensive assets assessment, shall participate in the self-sufficiency contract as a condition of receiving cash assistance. If any such adult fails to cooperate in carrying out the terms of the contract, the family shall be ineligible for cash assistance.

(a) Adult members of recipient families whose youngest child is between the ages of twelve weeks and six months shall engage in an individually determined number of part-time hours in activities such as family nurturing, preemployment skills, or education.

(b) Participation in activities outlined in the self-sufficiency contract shall not be required for one parent of a recipient family whose youngest child is under the age of twelve weeks.

(c) Cash assistance under section 68-1724 shall be extended: (i) To cover the twelve-week postpartum recovery period for children born to recipient families; and (ii) to recognize special medical conditions of such children requiring the presence of at least one adult member of the recipient family, as determined by the state, which extend past the age of twelve weeks.

(d) Full participation in the activities outlined in the self-sufficiency contract shall be required for adult members of a two-parent recipient family whose youngest child is over the age of six months. Part-time participation in activities outlined in the self-sufficiency contract shall be required for an adult member of a single-parent recipient family whose youngest child is under the age of six years.

(e) In cases in which the only adults in the recipient family do not have parental responsibility which shall mean such adults are not the biological or adoptive parents or stepparents of the children in their care, and assistance is requested for all family members, including the adults, the family shall participate in the activities outlined in the self-sufficiency contract as a condition of receiving cash assistance.

(f) Unemployed or underemployed absent and able-to-work parents of children in the recipient family may participate in self-sufficiency contracts, employment, and payment of child support, and such absent parents may be required to pay all or a part of the costs of the self-sufficiency contracts.

(3) Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. It is the intent of the Legislature that an independent mediation appeal process be developed as an option to be considered.

Source: Laws 1994, LB 1224, § 23; Laws 2007, LB351, § 10.

68-1724 Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.

(1) Cash assistance shall be provided for a period or periods of time not to exceed a total of sixty months for recipient families with children subject to the following:

(a) If the state fails to meet the specific terms of the self-sufficiency contract developed under section 68-1719, the sixty-month time limit established in this section shall be extended;

(b) The sixty-month time period for cash assistance shall begin within the first month of eligibility;

(c) When no longer eligible to receive cash assistance, assistance shall be available to reimburse work-related child care expenses even if the recipient family has not achieved economic self-sufficiency. The amount of such assistance shall be based on a cost-shared plan between the recipient family and the state which shall provide assistance up to one hundred eighty-five percent of the federal poverty level for up to twenty-four months. A recipient family may be required to contribute up to twenty percent of such family's gross income for child care. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families

with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available; and

(d) The self-sufficiency contract shall be revised and cash assistance extended when there is no job available for adult members of the recipient family. It is the intent of the Legislature that available job shall mean a job which results in an income of at least equal to the amount of cash assistance that would have been available if receiving assistance minus unearned income available to the recipient family.

The department shall develop policy guidelines to allow for cash assistance to persons who have received the maximum cash assistance provided by this section and who face extreme hardship without additional assistance. For purposes of this section, extreme hardship means a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents.

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows:

(a) Adults in recipient families shall mean individuals at least nineteen years of age living with and related to a child eighteen years of age or younger and shall include parents, siblings, uncles, aunts, cousins, or grandparents, whether the relationship is biological, adoptive, or step;

(b) The payment standard shall be based upon family size;

(c) The adults in the recipient family shall ensure that the minor children regularly attend school. Education is a valuable personal resource. The cash assistance provided to the recipient family may be reduced when the parent or parents have failed to take reasonable action to encourage the minor children of the recipient family ages sixteen and under to regularly attend school. No reduction of assistance shall be such as may result in extreme hardship. It is the intent of the Legislature that a process be developed to insure communication between the case manager, the parent or parents, and the school to address issues relating to school attendance;

(d) Two-parent families which would otherwise be eligible under section 43-504 or a federally approved waiver shall receive cash assistance under this section;

(e) For minor parents, the assistance payment shall be based on the minor parent's income. If the minor parent lives with at least one parent, the family's income shall be considered in determining eligibility and cash assistance payment levels for the minor parent. If the minor parent lives independently, support shall be pursued from the parents of the minor parent. If the absent parent of the minor's child is a minor, support from his or her parents shall be pursued. Support from parents as allowed under this subdivision shall not be pursued when the family income is less than three hundred percent of the federal poverty guidelines; and

(f) For adults who are not biological or adoptive parents or stepparents of the child or children in the family, if assistance is requested for the entire family, including the adults, a self-sufficiency contract shall be entered into as provided in section 68-1719. If assistance is requested for only the child or children in such a family, such children shall be eligible after consideration of the family's

income and if (i) the family cooperates in pursuing child support and (ii) the minor children of the family regularly attend school.

Source: Laws 1994, LB 1224, § 24; Laws 1995, LB 455, § 15; Laws 2007, LB351, § 11.

68-1725.01 Repealed. Laws 2004, LB 940, § 4.

68-1729 Repealed. Laws 2007, LB 296, § 815.

68-1730 Repealed. Laws 2007, LB 296, § 815.

68-1732 Integrated programs and policies; legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services, the State Department of Education, the Department of Labor, the Office of Probation Administration, the Department of Correctional Services, and the Department of Economic Development will have integrated programs and policies when serving a common customer. Organizational mergers and operating agreements shall be developed within state government which bring together the state's community-based child-serving and family-serving resources in the areas of health care services, social services, mental health services, developmental disabilities services, juvenile justice, and education. Such actions shall eliminate the need for the public to understand the differing roles, responsibilities, and services of the agencies enumerated in this section and their affiliates.

Source: Laws 1994, LB 1224, § 32; Laws 1996, LB 1044, § 365; Laws 2007, LB296, § 291.

(b) GOVERNOR'S ROUNDTABLE

68-1736 Repealed. Laws 2008, LB 797, § 35.

68-1737 Repealed. Laws 2008, LB 797, § 35.

ARTICLE 18

ICF/MR REIMBURSEMENT PROTECTION ACT

Section
68-1801. Act, how cited.
68-1802. Terms, defined.
68-1803. Tax; rate; collection; report.
68-1804. ICF/MR Reimbursement Protection Fund; created; allocation; investment.
68-1805. State medicaid plan; application for amendment; tax; when due.
68-1806. Collection of tax; discontinued; when; effect.
68-1807. Failure to pay tax; penalty.
68-1808. Refund; procedure.
68-1809. Rules and regulations.

68-1801 Act, how cited.

Sections 68-1801 to 68-1809 shall be known and may be cited as the ICF/MR Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 2.

68-1802 Terms, defined.

For purposes of the ICF/MR Reimbursement Protection Act:

(1) Department means the Department of Health and Human Services;

(2) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and

(4) Net revenue means the revenue paid to an intermediate care facility for the mentally retarded for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Source: Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292.

Cross References

Medical Assistance Act, see section 68-901.

68-1803 Tax; rate; collection; report.

(1) Each intermediate care facility for the mentally retarded shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/MR Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for the mentally retarded, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for the mentally retarded which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Source: Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2.

68-1804 ICF/MR Reimbursement Protection Fund; created; allocation; investment.

(1) The ICF/MR Reimbursement Protection 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. Interest and income earned by the fund shall be credited to the fund.

(2) For fiscal year 2004-05, proceeds from the tax imposed under section 68-1803 shall be allocated as follows:

(a) First, fifty-five thousand dollars to the department for administration of the fund;

(b) Second, payment to intermediate care facilities for the mentally retarded for the cost of the tax;

(c) Third, three hundred thousand dollars, in addition to any federal medicaid matching funds, for increases in payments to non-state-operated intermediate care facilities for the mentally retarded which shall be such facilities' only increase in payments for such fiscal year;

(d) Fourth, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for the purpose of reducing the waiting list of persons with developmental disabilities; and

(e) Fifth, any money remaining in the fund after the allocations required by subdivisions (2)(a) through (d) of this section have been made shall be transferred to the General Fund.

(3) For FY2005-06 and each fiscal year thereafter, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit as follows:

(a) To the ICF/MR Reimbursement Protection Fund for allocation as described in this subdivision: (i) Fifty-five thousand dollars for administration of the fund; (ii) the amount needed to reimburse intermediate care facilities for the mentally retarded for the cost of the tax; (iii) three hundred thousand dollars for payment of rates to non-state-operated intermediate care facilities; and (iv) three hundred twelve thousand dollars for community-based services for persons with developmental disabilities; and

(b) To the General Fund: The remainder of the proceeds.

Source: Laws 2004, LB 841, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-1805 State medicaid plan; application for amendment; tax; when due.

(1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/MR Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for the mentally retarded.

(2) The tax imposed under section 68-1803 is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

Source: Laws 2004, LB 841, § 6.

68-1806 Collection of tax; discontinued; when; effect.

(1) Collection of the tax imposed by section 68-1803 shall be discontinued if:

(a) The amendment to the state medicaid plan described in section 68-1805 is disapproved by the Centers for Medicare and Medicaid Services;

(b) The department reduces rates paid to intermediate care facilities for the mentally retarded to an amount less than the rates effective September 1, 2003; or

(c) The department or any other state agency attempts to utilize the money in the ICF/MR Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/MR Reimbursement Protection Act.

(2) If collection of the tax is discontinued as provided in subsection (1) of this section, all money in the fund shall be returned to the intermediate care facilities for the mentally retarded from which the tax was collected on the same basis as the tax was assessed.

Source: Laws 2004, LB 841, § 7.

68-1807 Failure to pay tax; penalty.

(1) An intermediate care facility for the mentally retarded that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for the mentally retarded for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293.

68-1808 Refund; procedure.

An intermediate care facility for the mentally retarded that has paid a tax that is not required by section 68-1803 may file a claim for refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

Source: Laws 2004, LB 841, § 9.

68-1809 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the ICF/MR Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 10.

CHAPTER 69
PERSONAL PROPERTY

Article.
3. Mail Order Contact Lens Act. 69-302, 69-305.
4. Scrap Metal Recycling. 69-401 to 69-409.
13. Disposition of Unclaimed Property.
(a) Uniform Disposition of Unclaimed Property Act. 69-1301 to 69-1329.
21. Consumer Rental Purchase Agreements. 69-2103.
24. Guns.
(a) Handguns. 69-2402 to 69-2419.
(c) Concealed Handgun Permit Act. 69-2427 to 69-2447.
27. Tobacco. 69-2703 to 69-2709.

ARTICLE 3
MAIL ORDER CONTACT LENS ACT

Section
69-302. Terms, defined.
69-305. Fees; disposition.

69-302 Terms, defined.

For purposes of the Mail Order Contact Lens Act:

(1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 69-303;

(2) Department means the Department of Health and Human Services;

(3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;

(4) Optometrist means a person licensed to practice optometry pursuant to the Optometry Practice Act; and

(5) Physician means a person licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2001, LB 398, § 87; Laws 2007, LB296, § 294; Laws 2007, LB463, § 1176.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Optometry Practice Act, see section 38-2601.

69-305 Fees; disposition.

The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in the Health Care Facility Licensure Act. Such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 2001, LB 398, § 90; Laws 2003, LB 242, § 12; Laws 2007, LB296, § 295.

Cross References

Health Care Facility Licensure Act, see section 71-401.

ARTICLE 4
SCRAP METAL RECYCLING

Section
69-401. Terms, defined.
69-402. Secondary metals recycler; purchase of regulated metals property; information required; duration; receipt.
69-403. Peace officer; right to inspect property and records.
69-404. Secondary metals recycler; limitations on payment.
69-405. Seller; age restriction; identification required.
69-406. Limitation on metal beer keg purchase or receipt.
69-407. Exemptions.
69-408. Violation; penalty.
69-409. Sections; how construed.

69-401 Terms, defined.

For purposes of sections 69-401 to 69-409:

(1) Regulated metals property means catalytic converters, all nonferrous metal except gold and silver, or metal beer kegs, including those kegs made of stainless steel; and

(2) Secondary metals recycler means any person, firm, or corporation in this state that:

(a) Is engaged in the business of gathering or obtaining regulated metals property that has served its original economic purpose; or

(b) Is in the business of or has facilities for performing the manufacturing process by which regulated metals property is converted into raw material products consisting of prepared grades and having an existing or potential economic value by methods including, but not limited to, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

Source: Laws 2008, LB766, § 1.
Operative date September 1, 2008.

69-402 Secondary metals recycler; purchase of regulated metals property; information required; duration; receipt.

(1) A secondary metals recycler shall maintain a record, either as a hard copy or electronically, of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

(a) The name and address of the secondary metals recycler;

(b) The name and signature of the individual entering the information;

(c) The date and time of the transaction;

(d) The weight and grade of the regulated metals property purchased;

(e) The description made in accordance with the custom of the trade of the type of regulated metals property purchased;

(f) The amount of consideration given for the regulated metals property, if any;

(g) The name, signature, and address of the vendor of the regulated metals property;

(h) The motor vehicle operator's license number, state identification card number, or federal government-issued identification card number of the person delivering the regulated metals property to the secondary metals recycler;

(i) A photocopy of the current motor vehicle operator's license, state-issued identification card, or federal government-issued identification card of the person delivering the regulated metals property to the secondary metals recycler;

(j) A fingerprint from the person, but only if the person is delivering copper or catalytic converters. The fingerprint shall be taken from the right index finger, but if the right index finger is missing, the fingerprint shall be taken from the left index finger; and

(k) A date-and-time-stamped photograph or a date-and-time-stamped video recording of the regulated metals property.

(3) The vendor of the regulated metals property shall receive at no charge a plain written or printed receipt of the recorded transaction containing a copy of the entries required by this section.

(4) A secondary metals recycler shall keep and maintain the information required under this section for not less than one year after the date of the purchase of the regulated metals property.

Source: Laws 2008, LB766, § 2.
Operative date September 1, 2008.

69-403 Peace officer; right to inspect property and records.

During the usual and customary business hours of a secondary metals recycler, any peace officer shall have the right to inspect:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler; and

(2) Any and all records required to be maintained under section 69-402.

Source: Laws 2008, LB766, § 3.
Operative date September 1, 2008.

69-404 Secondary metals recycler; limitations on payment.

No secondary metals recycler shall purchase regulated metals property for cash consideration unless the purchase total is not more than twenty-five dollars. Purchases made from the same person within a four-hour period shall be considered a single transaction. Payment shall be made payable only to the individual named on the identification presented pursuant to section 69-402. Payment for copper and catalytic converters shall be by check.

Source: Laws 2008, LB766, § 4.
Operative date September 1, 2008.

69-405 Seller; age restriction; identification required.

No secondary metals recycler shall purchase or receive regulated metals property:

(1) From any person who is under the age of majority; or

(2) From any person who does not possess a valid form of personal identification or current motor vehicle operator's license required under section 69-402 at the time of the recorded transaction.

Source: Laws 2008, LB766, § 5.
Operative date September 1, 2008.

69-406 Limitation on metal beer keg purchase or receipt.

No secondary metals recycler shall purchase or receive a metal beer keg, including those kegs made of stainless steel, if the serial number or other identifying insignia has been destroyed, removed, altered, covered, or defaced.

Source: Laws 2008, LB766, § 6.
Operative date September 1, 2008.

69-407 Exemptions.

Sections 69-401 to 69-409 do not apply to:

(1) Purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business;

(2) The collection or purchase of regulated metals property in the form of beverage or food cans; or

(3) Recycling or neighborhood cleanup programs contracted or sponsored by the state or any political subdivision.

Source: Laws 2008, LB766, § 7.
Operative date September 1, 2008.

69-408 Violation; penalty.

Any person violating any of the provisions of sections 69-401 to 69-409 is guilty of a Class II misdemeanor.

Source: Laws 2008, LB766, § 8.
Operative date September 1, 2008.

69-409 Sections; how construed.

Nothing in sections 69-401 to 69-409 shall be construed to abrogate or affect the provisions of any lawful rule, regulation, resolution, ordinance, or statute which is more restrictive than sections 69-401 to 69-409.

Source: Laws 2008, LB766, § 9.
Operative date September 1, 2008.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Section
69-1311. Report of property presumed abandoned; notices; time; contents; exceptions.
69-1318.01. Payment with respect to support order obligor authorized.
69-1329. Act, how cited.

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1301 Terms, defined.

As used in the Uniform Disposition of Unclaimed Property Act unless the context otherwise requires:

(a) Banking organization means any bank, trust company, savings bank, industrial bank, land bank, or safe deposit company.

(b) Business association means any corporation, joint-stock company, business trust, partnership, limited liability company, or association for business purposes of two or more individuals, but does not include a public corporation.

(c) Financial organization means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, doing business in this state.

(d) General-use prepaid card means a plastic card or other electronic payment device usable with multiple, unaffiliated sellers of goods or services.

(e) Holder means any person in possession of property subject to the act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the act.

(f) Life insurance corporation means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

(g) Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the act, or his or her legal representative.

(h) Person means any individual, business association, governmental or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(i) Utility means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Source: Laws 1969, c. 611, § 1, p. 2478; Laws 1992, Third Spec. Sess., LB 26, § 3; Laws 1993, LB 121, § 414; Laws 2003, LB 131, § 34; Laws 2006, LB 173, § 1.

69-1305.02 Credit memo; presumed abandoned; when.

A credit memo that remains unredeemed for more than three years after issuance is presumed abandoned and the amount presumed abandoned is the amount credited, as shown on the memo itself.

Source: Laws 1994, LB 1048, § 3; Laws 2006, LB 173, § 2.

69-1305.03 Gift certificate or gift card; presumed abandoned; when.

(a) A gift certificate or gift card which is not assessed any fees and does not have an expiration date shall not be presumed to be abandoned.

(b) A gift certificate or gift card which contains an expiration date or requires any type of post-sale finance charge or fee which is unredeemed for a period of three years from the date of issuance shall be presumed abandoned.

(c) A gift certificate or gift card issued prior to November 2, 2006, which contains an expiration date or requires any type of post-sale finance charge or fee and has not been redeemed shall not be presumed abandoned if the issuer's policy and practice as of July 1, 2006, is to waive all post-sale charges or fees and to honor such gift certificate or gift card, at no additional cost to the holder whenever presented at full face value or the value remaining after any applicable purchases, expiration date notwithstanding. A written notice of such policy and practice shall be posted conspicuously by July 1, 2006, in not smaller than ten-point type, at each site in all Nebraska locations at which the issuer distributes or redeems a gift certificate or gift card.

(d) In the case of a gift certificate or gift card, the amount presumed abandoned is the face amount of the certificate or card itself, less the total amount of any applicable purchases and fees.

(e) A gift certificate or gift card subject to a fee shall contain a statement clearly and conspicuously printed on it stating whether there is a fee, the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift certificate or gift card, and when the fee will be assessed. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(f) A gift certificate or gift card subject to an expiration date shall contain a statement clearly and conspicuously printed on the gift certificate or gift card stating the expiration date. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(g) This section does not apply to a general-use prepaid card.

Source: Laws 2006, LB 173, § 3; Laws 2008, LB668, § 1. Effective date July 18, 2008.

69-1308 Other intangible property; general-use prepaid card; presumed abandoned; when.

(a) Except as provided in subsection (b) of this section, all intangible personal property, not otherwise covered by the Uniform Disposition of Unclaimed Property Act, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable, is presumed abandoned.

(b) The unredeemed value of a general-use prepaid card, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after the last transaction initiated by the card owner, is presumed abandoned.

Source: Laws 1969, c. 611, § 8, p. 2483; Laws 1992, Third Spec. Sess., LB 26, § 12; Laws 2006, LB 173, § 4.

69-1311 Report of property presumed abandoned; notices; time; contents; exceptions.

(a) Between March 1 and March 10 of each year the State Treasurer shall cause notice to be published once in an English language legal newspaper of general circulation in the county in this state in which is located the last-known address of any person to be named in the notice. If no address is known, then the notice shall be published in a legal newspaper having statewide circulation.

(b) The published notice shall be entitled Notice to Owners of Abandoned Property, and shall contain:

(1) The names in alphabetical order and counties of last-known addresses, if any, of persons listed in the report and entitled to notice as provided in subsection (a) of this section.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he or she deems such publication to be in the public interest.

(d) Within one hundred twenty days from the receipt of the report required by section 69-1310, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under the Uniform Disposition of Unclaimed Property Act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is presented by the owner to the State Treasurer, arrangements will be made to transfer the property to the owner as provided by law.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 69-1302.

Source: Laws 1969, c. 611, § 11, p. 2485; Laws 1971, LB 648, § 1; Laws 1977, LB 305, § 5; Laws 2005, LB 476, § 1.

69-1318.01 Payment with respect to support order obligor authorized.

The State Treasurer may make payment on a claim filed under the Uniform Disposition of Unclaimed Property Act by a person who is not the owner of the property, or by a legal representative of such person, when the owner is an obligor, as defined in section 43-3341, and the person filing the claim is an obligee, as defined in such section. Such payments shall only be made to credit an arrearage of an obligor.

Source: Laws 2006, LB 771, § 1.

69-1329 Act, how cited.

Sections 69-1301 to 69-1329 shall be known and may be cited as the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1969, c. 611, § 29, p. 2490; Laws 1992, Third Spec. Sess., LB 26, § 21; Laws 1994, LB 1048, § 9; Laws 2003, LB 424, § 5; Laws 2006, LB 173, § 5; Laws 2006, LB 771, § 2.

ARTICLE 21

CONSUMER RENTAL PURCHASE AGREEMENTS

Section
69-2103. Terms, defined.

69-2103 Terms, defined.

For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but does not include in-store merchandising aids such as window signs and ceiling banners;

(2) Cash price means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer means a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement means an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16), as such regulation existed on September 1, 2001, and 15 U.S.C. 1602(g), as such section existed on September 1, 2001, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(e), as such regulation existed on September 1, 2001. Consumer rental purchase agreement does not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in subdivision (35) of section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation means the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

(6) Department means the Department of Banking and Finance;

(7) Lease payment means a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but does not include taxes imposed on such payment;

(8) Lease period means a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;

(9) Lessor means a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement;

(10) Property means any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; and

(11) Total of payments to acquire ownership means the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership includes lease payments and any initial nonrefundable administrative fee or required delivery charge but does not include taxes, late charges, reinstatement fees, or charges for optional products or services.

Source: Laws 1989, LB 681, § 3; Laws 1993, LB 111, § 2; Laws 2001, LB 641, § 1; Laws 2005, LB 570, § 3.

ARTICLE 24

GUNS

(a) HANDGUNS

Section
69-2402. Terms, defined.
69-2404. Certificate; application; fee.
69-2405. Application; chief of police or sheriff; duties; immunity.
69-2406. Certificate; denial or revocation; appeal; filing fee.
69-2410. Importer, manufacturer, or dealer; sale or delivery; duties.
69-2411. Request for criminal history record check; Nebraska State Patrol; duties; fee.
69-2418. Instant criminal history record check; requirements; exemptions.
69-2419. Criminal history records; prohibited acts; violation; penalty.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427. Act, how cited.
69-2428. Permit to carry concealed handgun; authorized.
69-2429. Terms, defined.
69-2430. Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.
69-2431. Fingerprinting; criminal history record information check.
69-2432. Nebraska State Patrol; handgun training and safety courses and instructors; duties; certificate of completion of course; fee.
69-2433. Applicant; requirements.
69-2434. Permit; design and form.
69-2435. Permitholder; continuing requirements; return of permit; when.
69-2436. Permit; period valid; fee; renewal; fee.
69-2437. Permit; nontransferable.
69-2438. Limitation on liability.
69-2439. Permit; application for revocation; prosecution; fine; costs.
69-2440. Permitholder; duties; contact with peace officer or emergency services personnel; procedures for securing handgun.
69-2441. Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.
69-2442. Injury to person or damage to property; permitholder; report required.
69-2443. Violations; penalties; revocation of permit.
69-2444. Listing of applicants and permitholders; availability; confidential information.
69-2445. Carrying concealed weapon under other law; act; how construed.
69-2446. Rules and regulations.
69-2447. Department of Motor Vehicles records; use and update of information.

(a) HANDGUNS

69-2402 Terms, defined.

For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol shall mean any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(2) Criminal history record check shall include a check of the criminal history records of the Nebraska State Patrol and a check of the Federal Bureau of Investigation's National Instant Criminal Background Check System; and

(3) Handgun shall mean any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.

Source: Laws 1991, LB 355, § 25; Laws 1996, LB 1055, § 2; Laws 2006, LB 1227, § 1.

69-2404 Certificate; application; fee.

Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, social security number, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Source: Laws 1991, LB 355, § 3; Laws 2006, LB 1227, § 2.

69-2405 Application; chief of police or sheriff; duties; immunity.

Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to three days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the three-day period. If it is

determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the three-day period, the day of receipt of the application shall not be included and the last day of the three-day period shall be included. The three-day period shall expire at 11:59 p.m. of the third day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the three-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 69-2401, 69-2403 to 69-2408, and 69-2409.01.

Source: Laws 1991, LB 355, § 4; Laws 1996, LB 1055, § 3; Laws 2006, LB 1227, § 3.

69-2406 Certificate; denial or revocation; appeal; filing fee.

Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the three-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence. The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

Source: Laws 1991, LB 355, § 5; Laws 2006, LB 1227, § 4.

69-2410 Importer, manufacturer, or dealer; sale or delivery; duties.

No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include the name, address, date of birth, gender, race, social security number or other identification number, and country of citizenship of such potential buyer or transferee. If the potential buyer or transferee is not a United States citizen, the completed consent form shall contain the potential buyer's or transferee's place of birth and his or her alien or admission number;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Source: Laws 1991, LB 355, § 9; Laws 1996, LB 1055, § 6; Laws 2006, LB 1227, § 5.

69-2411 Request for criminal history record check; Nebraska State Patrol; duties; fee.

(1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Check its criminal history records and check the Federal Bureau of Investigation's National Instant Criminal Background Check System to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 69-2410 to 69-2423 with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 69-2410, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

Source: Laws 1991, LB 355, § 10; Laws 2006, LB 1227, § 6.

69-2418 Instant criminal history record check; requirements; exemptions.

Sections 69-2410 to 69-2423 shall not apply to:

(1) Any antique handgun or pistol; or

(2) Any firearm which is a curio or relic as defined in 27 C.F.R. 478.11.

Source: Laws 1991, LB 355, § 17; Laws 2006, LB 1227, § 7.

69-2419 Criminal history records; prohibited acts; violation; penalty.

Any licensed importer, manufacturer, or dealer who knowingly and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 69-2410 to 69-2423 or knowingly and intentionally disseminates any criminal history record check

information to any person other than the subject of such information shall be guilty of a Class I misdemeanor.

Source: Laws 1991, LB 355, § 18; Laws 2006, LB 1227, § 8.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2447 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1.

69-2428 Permit to carry concealed handgun; authorized.

An individual may obtain a permit to carry a concealed handgun in accordance with the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 2.

69-2429 Terms, defined.

For purposes of the Concealed Handgun Permit Act:

(1) Concealed handgun means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;

(2) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Peace officer means any town marshal, chief of police or local police officer, sheriff or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;

(5) Permitholder means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act; and

(6) Proof of training means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:

(a) Within the previous three years, has successfully completed a handgun training and safety course approved by the Nebraska State Patrol pursuant to section 69-2432; or

(b) Is a member of the active or reserve armed forces of the United States or a member of the National Guard and has had handgun training within the previous three years which meets the minimum safety and training requirements of section 69-2432.

Source: Laws 2006, LB 454, § 3; Laws 2007, LB463, § 1177.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

69-2430 Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.

(1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, social security number, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3) The permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Source: Laws 2006, LB 454, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

69-2431 Fingerprinting; criminal history record information check.

In order to insure an applicant's initial compliance with sections 69-2430 and 69-2433, the applicant for a permit to carry a concealed handgun shall be fingerprinted by the Nebraska State Patrol and a check made of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The criminal history record information check under the Concealed Handgun Permit Act is for initial compliance only.

Source: Laws 2006, LB 454, § 5.

69-2432 Nebraska State Patrol; handgun training and safety courses and instructors; duties; certificate of completion of course; fee.

(1) The Nebraska State Patrol shall prepare and publish minimum training and safety requirements for and adopt and promulgate rules and regulations governing handgun training and safety courses and handgun training and safety course instructors. Minimum safety and training requirements for a handgun training and safety course shall include, but not be limited to:

(a) Knowledge and safe handling of a handgun;

(b) Knowledge and safe handling of handgun ammunition;

(c) Safe handgun shooting fundamentals;

(d) A demonstration of competency with a handgun with respect to the minimum safety and training requirements;

(e) Knowledge of federal, state, and local laws pertaining to the purchase, ownership, transportation, and possession of handguns;

(f) Knowledge of federal, state, and local laws pertaining to the use of a handgun, including, but not limited to, use of a handgun for self-defense and laws relating to justifiable homicide and the various degrees of assault;

(g) Knowledge of ways to avoid a criminal attack and to defuse or control a violent confrontation; and

(h) Knowledge of proper storage practices for handguns and ammunition, including storage practices which would reduce the possibility of accidental injury to a child.

(2) A person or entity conducting a handgun training and safety course and the course instructors shall be approved by the patrol before operation. The patrol shall issue a certificate evidencing its approval.

(3) A certificate of completion of a handgun training and safety course shall be issued by the person or entity conducting a handgun training and safety course to persons successfully completing the course. The certificate of completion shall also include certification from the instructor that the person completing the course does not suffer from a readily discernible physical infirmity that prevents the person from safely handling a handgun.

(4) Any fee for participation in a handgun training and safety course is the responsibility of the applicant.

Source: Laws 2006, LB 454, § 6.

69-2433 Applicant; requirements.

An applicant shall:

(1) Be at least twenty-one years of age;

(2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;

(3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;

(4) Not have pled guilty to, not have pled nolo contendere to, or not have been convicted of a felony or a crime of violence under the laws of this state or under the laws of any other jurisdiction;

(5) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a similar law of another jurisdiction or not be currently adjudged mentally incompetent;

(6) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes;

(7) Have had no violations of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction in the ten years preceding the date of application;

(8) Not be on parole, probation, house arrest, or work release;

(9) Be a citizen of the United States; and

(10) Provide proof of training.

Source: Laws 2006, LB 454, § 7.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

69-2434 Permit; design and form.

The design and form of the permit to carry a concealed handgun shall be prescribed by the Nebraska State Patrol. The permit shall list the permitholder's name, the permitholder's address, and the expiration date of the permit and contain a photograph of the permitholder.

Source: Laws 2006, LB 454, § 8.

69-2435 Permitholder; continuing requirements; return of permit; when.

A permitholder shall continue to meet the requirements of section 69-2433 during the time he or she holds the permit. If, during such time, a permitholder does not continue to meet one or more of the requirements, the permitholder shall return his or her permit to the Nebraska State Patrol for revocation. If a permitholder does not return his or her permit, the permitholder is subject to having his or her permit revoked under section 69-2439.

Source: Laws 2006, LB 454, § 9.

69-2436 Permit; period valid; fee; renewal; fee.

(1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(4) On or before June 30, 2007, the Nebraska State Patrol shall journal entry, as necessary, all current fiscal year expenses and revenue, including investment income, from the Public Safety Cash Fund under the Concealed Handgun

Permit Act and recode them against the Nebraska State Patrol Cash Fund and its program appropriation.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17.

69-2437 Permit; nontransferable.

A permit to carry a concealed handgun shall be issued to a specific individual only and shall not be transferred from one person to another.

Source: Laws 2006, LB 454, § 11.

69-2438 Limitation on liability.

The Nebraska State Patrol or any agent, employee, or member thereof is not civilly liable to any injured person or his or her estate for any injury suffered, including any action for wrongful death or property damage suffered, relating to the issuance or revocation of a permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 12.

69-2439 Permit; application for revocation; prosecution; fine; costs.

(1) Any peace officer having probable cause to believe that a permitholder is no longer in compliance with one or more requirements of section 69-2433 shall bring an application for revocation of the permit to be prosecuted as provided in subsection (2) of this section.

(2) It is the duty of the county attorney or his or her deputy of the county in which such permitholder resides to prosecute a case for the revocation of a permit to carry a concealed handgun brought pursuant to subsection (1) of this section. In case the county attorney refuses or is unable to prosecute the case, the duty to prosecute shall be upon the Attorney General or his or her assistant.

(3) The case shall be prosecuted as a civil case, and the permit shall be revoked upon a showing by a preponderance of the evidence that the permitholder does not meet one or more of the requirements of section 69-2433.

(4) A person who has his or her permit revoked under this section may be fined up to one thousand dollars and shall be charged with the costs of the prosecution. The money collected under this subsection as an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2006, LB 454, § 13.

69-2440 Permitholder; duties; contact with peace officer or emergency services personnel; procedures for securing handgun.

(1) A permitholder shall carry his or her permit to carry a concealed handgun and his or her Nebraska driver's license, Nebraska-issued state identification card, or military identification card any time he or she carries a concealed handgun. The permitholder shall display both the permit to carry a concealed handgun and his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card when asked to do so by a peace officer or by emergency services personnel.

(2) Whenever a permitholder who is carrying a concealed handgun is contacted by a peace officer or by emergency services personnel, the permit-

holder shall immediately inform the peace officer or emergency services personnel that the permitholder is carrying a concealed handgun.

(3)(a) During contact with a permitholder, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact if the peace officer or emergency services personnel determines that it is necessary for the safety of any person present, including the peace officer or emergency services personnel. The permitholder shall submit to the order to secure the handgun.

(b)(i) When the peace officer has determined that the permitholder is not a threat to the safety of any person present, including the peace officer, and the permitholder has not committed any other violation that would result in his or her arrest or the suspension or revocation of his or her permit, the peace officer shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact.

(ii) When emergency services personnel have determined that the permitholder is not a threat to the safety of any person present, including emergency services personnel, and if the permitholder is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact. If the permitholder is transported for treatment to another location, the handgun shall be turned over to any peace officer. The peace officer shall provide a receipt which includes the make, model, caliber, and serial number of the handgun.

(4) For purposes of this section, contact with a peace officer means any time a peace officer personally stops, detains, questions, or addresses a permitholder for an official purpose or in the course of his or her official duties, and contact with emergency services personnel means any time emergency services personnel provide treatment to a permitholder in the course of their official duties.

Source: Laws 2006, LB 454, § 14.

69-2441 Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.

(1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial school or private or public university, college, or community college; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by law or rule or regulation.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises. A permitholder carrying a concealed handgun in a vehicle into or onto any place or premises does not violate this section so long as the handgun is not removed from the vehicle while the vehicle is in or on the place or premises. An employer may prohibit employees or other persons who are permitholders from carrying concealed handguns in vehicles owned by the employer.

(3) A permitholder shall not carry a concealed handgun while he or she is consuming alcohol or while the permitholder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1.

Cross References

Nebraska Liquor Control Act, see section 53-101.

69-2442 Injury to person or damage to property; permitholder; report required.

Any time the discharge of a handgun carried by a permitholder pursuant to the Concealed Handgun Permit Act results in injury to a person or damage to property, the permitholder shall make a report of such incident to the Nebraska State Patrol on a form designed and distributed by the Nebraska State Patrol. The information from the report shall be maintained as provided in section 69-2444.

Source: Laws 2006, LB 454, § 16.

69-2443 Violations; penalties; revocation of permit.

(1) A permitholder who violates subsection (1) or (2) of section 69-2440 or section 69-2441 or 69-2442 is guilty of a Class III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permitholder who violates subsection (3) of section 69-2440 is guilty of a Class I misdemeanor.

(3) A permitholder convicted of a violation described in subsection (1) or (2) of this section may also have his or her permit revoked.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2.

69-2444 Listing of applicants and permitholders; availability; confidential information.

The Nebraska State Patrol shall maintain a listing of all applicants and permitholders and any pertinent information regarding such applicants and permitholders. The information shall be available upon request to all federal, state, and local law enforcement agencies. Information relating to an applicant or to a permitholder received or maintained pursuant to the Concealed Handgun Permit Act by the Nebraska State Patrol or any other law enforcement agency is confidential and shall not be considered a public record within the meaning of sections 84-712 to 84-712.09.

Source: Laws 2006, LB 454, § 18.

69-2445 Carrying concealed weapon under other law; act; how construed.

Nothing in the Concealed Handgun Permit Act prevents a person from carrying a concealed weapon as permitted under section 28-1202.

Source: Laws 2006, LB 454, § 19.

69-2446 Rules and regulations.

The Nebraska State Patrol may adopt and promulgate rules and regulations to carry out the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 20.

69-2447 Department of Motor Vehicles records; use and update of information.

(1) The Department of Motor Vehicles shall modify the existing system of the department to allow the status of a permit to carry a concealed handgun and the dates of issuance and expiration of such permit to be recorded on the permitholder's record provided for in section 60-483. The Nebraska State Patrol shall use the system to record the issuance or renewal of a permit to carry a concealed handgun. The transmission of notice of the issuance or renewal of such permit shall include the applicant's name, the applicant's motor vehicle operator's license number or state identification card number, and the dates of issuance and expiration of the permit to carry a concealed handgun.

(2) An abstract of a court record of every case in which a person's permit to carry a concealed handgun is revoked shall be transmitted to the Department of Motor Vehicles using the abstracting system provided for in section 60-497.01. Such abstract shall contain the name of the revoked permitholder, his or her motor vehicle operator's license number or state identification card number, and the date of revocation of the permit to carry a concealed handgun.

Source: Laws 2006, LB 454, § 21.

ARTICLE 27

TOBACCO

Section

Section
69-2707. Nonresident or foreign nonparticipating manufacturer; agent for service of process.
69-2708. Stamping agent; duties; Tax Commissioner; Attorney General; powers; escrow deposits.
69-2709. Revocation or suspension of stamping agent license; civil penalty; contraband; actions to enjoin; criminal penalty; remedies cumulative.

69-2703 Tobacco product manufacturer; requirements to sell within the state.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 29, 1999, shall do one of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) 1999: $.0094241 per unit sold after April 29, 1999;

(ii) 2000: $.0104712 per unit sold;

(iii) For each of the years 2001 and 2002: $.0136125 per unit sold;

(iv) For each of the years 2003, 2004, 2005, and 2006: $.0167539 per unit sold; and

(v) For the year 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2)(a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (2)(b)(i) in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under subdivision (2)(b)(i) or (2)(b)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision (2) of this section shall annually certify to the Attorney

General that it is in compliance with subdivision (2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(i) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow. Such civil penalty shall be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section constitutes a separate violation.

Source: Laws 1999, LB 574, § 2; Laws 2004, LB 944, § 1.

69-2703.01 Unconstitutionality of amendatory provision; effect.

If the amendments to subdivision (2)(b)(ii) of section 69-2703 made by Laws 2004, LB 944, are held by a court of competent jurisdiction to be unconstitutional, then the changes made by Laws 2004, LB 944, shall be deemed repealed and subdivision (2)(b)(ii) of section 69-2703 shall be deemed to be in the form as it existed prior to such amendments. Neither a holding of unconstitutionality nor an implied repeal of the amendment shall affect, impair, or invalidate any other portion of section 69-2703 or the application of such section to any other person or circumstance and those remaining portions of section 69-2703 shall at all times continue in full force and effect.

Source: Laws 2004, LB 944, § 2.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

(1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer or is in full compliance with

subdivision (2) of section 69-2703, including all quarterly installment payments required by subsection (4) of section 69-2708.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; and

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2710 and any rules and regulations adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications except:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subdivisions (1)(c) and (d) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 or subsection (4) of section 69-2708 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2710;

(d) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product

manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (2) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(e) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2710.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(d) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2710.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (b) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in the United States to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2710, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have

the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers; escrow deposits.

(1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the Tax Commissioner, each stamping agent shall submit such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2710, including, but not limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years.

(2) The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 69-2703, of the amount of money in such fund, exclusive of interest, the amounts and dates of each deposit to such fund, and the amounts and dates of each withdrawal from such fund.

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 69-2704 to 69-2710.

(4) To promote compliance with sections 69-2704 to 69-2707, a tobacco product manufacturer subject to the requirements of subdivision (1)(c) of section 69-2706 shall make the escrow deposits required by section 69-2703 in quarterly installments during the year in which the sales covered by such deposits are made: (a) Through the end of the calendar year following the year the tobacco product manufacturer is listed in the directory established pursuant to section 69-2706; (b) if the tobacco product manufacturer is removed from, then subsequently relisted in, the directory, then for all periods following the relisting through the end of the calendar year following the year the tobacco product manufacturer is relisted in the directory; (c) if the tobacco product manufacturer has failed to make a complete and timely escrow deposit for any calendar year as required by section 69-2703 or for any quarter as required in this section; or (d) if the tobacco product manufacturer has failed to pay any judgment, including any civil penalty ordered under section 69-2703 or 69-2709. The Tax Commissioner may require production of information sufficient to enable the Tax Commissioner to determine the adequacy of the amount of the installment deposit. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers sub-

ject to the requirements of subdivision (1)(c) of section 69-2706 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3.

69-2709 Revocation or suspension of stamping agent license; civil penalty; contraband; actions to enjoin; criminal penalty; remedies cumulative.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation hereof, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(3) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of section 69-2706 or subsection (1) or (4) of section 69-2708 by a stamping agent and to compel the stamping agent to comply with any of such subsections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

(4) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this section is a Class III misdemeanor.

(5) If a court determines that a person has violated any portion of sections 69-2704 to 69-2710, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2710 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4.

CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.
3. Right-of-Way for Pole Lines. 70-301.
6. Public Power and Irrigation Districts. 70-601 to 70-667.
8. Rural Power Districts. 70-802.
14. Joint Public Power Authority Act. 70-1402 to 70-1417.
17. Electrical Service Purchase Agreements. 70-1701 to 70-1705.
18. Public Entities Mandated Project Charges Act. 70-1801 to 70-1817.
19. Rural Community-Based Energy Development Act. 70-1901 to 70-1909.

ARTICLE 3
RIGHT-OF-WAY FOR POLE LINES

Section
70-301. Right-of-way; acquisition; procedure; approval.

70-301 Right-of-way; acquisition; procedure; approval.

Any public power district, corporation, or municipality that engages in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes, the production, storage, or distribution of hydrogen for use in fuel processes, or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections 70-305 to 70-310 and 86-701 to 86-707, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-301; Laws 1951, c. 101, § 104, p. 495; Laws 1969, c. 545, § 1, p. 2199; Laws 1973, LB 187, § 7; Laws 1986, LB 1230, § 33; Laws 2002, LB 1105, § 467; Laws 2005, LB 139, § 1.

ARTICLE 6
PUBLIC POWER AND IRRIGATION DISTRICTS

Section

70-601 Terms, defined.

For purposes of Chapter 70, article 6, unless the context otherwise requires:

(1) District means a public power district, public irrigation district, or public power and irrigation district, organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended, and includes, when applicable, rural public power districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6;

(2) Municipality, when used in relation to the organization or charter of a public power district or to the election of successors to the board of directors of a public power district, means any county, city, incorporated village, or voting precinct in this state;

(3) Governing body, whenever used in relation to any municipality, means the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body means the county board of the county in which the precinct is located;

(4) Irrigation works means any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water

for irrigation purposes or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power includes any and all electrical energy and capacity generated, produced, transmitted, distributed, bought, or sold, hydrogen produced, stored, or distributed, and ethanol produced for purposes of lighting, heating, power, and any and every other useful purpose whatsoever;

(6) Plant or system includes any and all property owned, used, operated, or useful for operation in the district's business, including the generation by means of water power, steam, or other means or in the transmission, distribution, sale, or purchase of electrical energy, hydrogen, or ethanol for any and every useful purpose, including any and all irrigation works which may be owned, used, or operated in conjunction with such power plant or system;

(7) Energy equipment includes, but is not limited to, equipment or facilities used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam for use by the district or the district's commercial and industrial customers; and

(8) Public power industry means public power districts, public power and irrigation districts, municipalities, registered groups of municipalities, electric cooperatives, electric membership associations, joint entities formed under the Interlocal Cooperation Act, joint public agencies formed under the Joint Public Agency Act, agencies formed under the Municipal Cooperative Financing Act, and any other governmental entities providing electric service.

Source: Laws 1933, c. 86, § 1, p. 338; Laws 1937, c. 152, § 1, p. 577; Laws 1939, c. 88, § 2, p. 386; C.S.Supp.,1941, § 70-701; R.S. 1943, § 70-601; Laws 1965, c. 403, § 1, p. 1290; Laws 1981, LB 181, § 5; Laws 1985, LB 2, § 4; Laws 1986, LB 1230, § 34; Laws 1986, LB 949, § 2; Laws 1997, LB 658, § 5; Laws 2004, LB 969, § 12; Laws 2005, LB 139, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-601.01 Ethanol production and distribution; hydrogen production and distribution; legislative findings.

(1) The Legislature finds and declares that:

(a) Nebraska has been and will continue to be a state which is dependent on a stable, income-producing farm sector;

(b) When agriculture fails to produce adequate income for farmers, ranchers, and agricultural business interests within this state, the economic well-being of the state and its citizens will be threatened;

(c) There currently exists a chronic grain surplus within the state because of underutilization of grain products, and prices for grain remain unreasonably low because of such surplus and underutilization;

(d) Enlargement of the ethanol industry within the state would result in additional utilization of surplus grain;

(e) Ethanol will be increasingly in demand in the marketplace because of its efficacy as an octane enhancer and fuel extender;

(f) The public power industry within the state is experienced in the production and transmission of electrical power; and

(g) The experience of the public power industry could be used in the development of the production and distribution of ethanol and in the enhancement of the economic well-being of this state.

(2) The Legislature further finds:

(a) Hydrogen production and distribution may serve as a viable alternative in the marketplace for use in fuel processes;

(b) The public power industry within the state is experienced in the production and transmission of electrical power; and

(c) The experience of the public power industry could be used in the development of the production, storage, and distribution of hydrogen for use in fuel processes and in the enhancement of the economic well-being of this state.

Source: Laws 1986, LB 1230, § 32; Laws 2005, LB 139, § 3.

70-604 District; petition; contents.

The petition shall be addressed to the Nebraska Power Review Board and state in substance that it is the intent and purpose of the petitioners by such petition to create or amend the charter of a district subject to approval by the Nebraska Power Review Board. The petition shall state and contain:

(1) The name of the district, which name shall contain, if the district is to engage or is engaged in the electric light and power business, hydrogen production, storage, or distribution, or ethanol production and distribution, the words public power district. If the district is to engage or is engaged in the business of owning and operating irrigation works, the name shall include the words public irrigation district, except that if electric light and power are the major business of such district, it need not include these words in its name. A district may be organized to engage only in the electric light and power business, the production, storage, or distribution of hydrogen, and the production and distribution of ethanol, only in the business of owning and operating irrigation works, in any business identified in section 70-625, or in all of such businesses;

(2) The names of the municipalities constituting the district and the boundaries of such district;

(3) A general description of the nature of the business which the district intends to engage in and, for the original creation of a district, the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the district;

(5) A statement that the district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) When the Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable, such subdivisions shall be of substantially equal population, except that no district shall be required to redistrict its subdivisions for purposes of equalizing population more frequently than every ten years following publication of the most recent federal decennial census; and

(7) Except in a district having within its boundaries twenty-five or more cities or villages, the names and addresses of the members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve or continue to serve until their successors are elected and qualified. In any district having within its boundaries twenty-five or more cities and villages, (a) the original petition for creation shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within thirty days after the approval of the formation of the district and (b) a petition to amend a charter shall set forth the names and addresses of the members of the board of directors of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first statewide general election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second statewide general election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third statewide general election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, for an original petition in case the district has within its proposed boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; R.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(2), p. 507; R.S.1943, § 70-604; Laws 1945, c. 157, § 1, p. 516; Laws 1955, c. 267, § 1, p. 839; Laws 1967, c. 418, § 1, p. 1284; Laws 1981, LB 181, § 8; Laws 1986, LB 1230, § 35; Laws 1986, LB 949, § 5; Laws 1997, LB 658, § 6; Laws 2005, LB 139, § 4.

70-604.02 Operating area, defined.

The operating area of a district, for purposes of establishing its chartered territory, is the geographical area in this state comprising:

(1) The district's retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district's wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity either directly or indirectly from the district for resale to their retail customers if the selling district has the responsibility, in whole or in part, of charging for and delivery of the electricity by transmission lines to the retail public electric utility distribution lines at one or more points of delivery pursuant to a power contract to deliver firm power and energy and having an original term of five years or more. To the extent that a selling district leases its plant or systems to another district to be operated by such other district, or produces electricity, hydrogen, or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Source: Laws 1967, c. 418, § 8, p. 1289; Laws 1986, LB 1230, § 36; Laws 1986, LB 949, § 7; Laws 2005, LB 139, § 5.

70-610 Board of directors; qualifications; election; expenses.

(1) After the selection of the original board of directors of a district as provided for in sections 70-604 and 70-609, successors shall be nominated and elected as provided in section 32-512. Elections shall be conducted as provided in the Election Act.

(2) A candidate for director shall be a registered voter residing within the chartered territory or subdivision as defined in the charter of the district or a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(3) Each public power district shall pay for the election expenses of nominating and electing its directors as provided in this section. Except as otherwise provided in this section, the district shall pay to each county in which the name of one or more candidates appears upon the ballot as follows: Counties having a population of less than three thousand inhabitants, one hundred dollars; counties having a population of at least three thousand but less than nine thousand inhabitants, one hundred fifty dollars; counties having a population of at least nine thousand but less than fourteen thousand inhabitants, two hundred dollars; counties having a population of at least fourteen thousand but less than twenty thousand inhabitants, two hundred fifty dollars; counties having a population of at least twenty thousand but less than sixty thousand inhabitants, three hundred dollars; counties having a population of at least sixty thousand but less than one hundred thousand inhabitants, fifteen hundred dollars; counties having a population of at least one hundred thousand but less than two hundred thousand inhabitants, three thousand dollars; and counties having a population of two hundred thousand inhabitants or more, fifty-five hundred dollars. The population of a county for purposes of this section shall be the population as determined by the most recent federal decennial census.

When the name of one or more candidates of a district appears on ballots in less than one-half of the precincts in a county, the cost to the district shall be reduced fifty percent. Election expenses shall be due and payable by each public power district within thirty days after receipt of a statement from the county.

(4) In lieu of the payment of election expenses pursuant to subsection (3) of this section, a district shall pay for the election expenses of nominating and electing its board of directors pursuant to subsection (2) of section 32-1203 upon request of a county. The election expenses shall be due and payable by the district within thirty days after receipt from the county of an itemized statement of election expenses owed by the district. This subsection shall not be construed to authorize reimbursement for expenses not directly attributable to nominating and electing members of the board of directors.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 2(1), (11), pp. 510, 515; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-610; Laws 1949, c. 198, § 1, p. 587; Laws 1957, c. 124, § 21, p. 431; Laws 1959, c. 135, § 29, p. 525; Laws 1963, c. 395, § 1, p. 1253; Laws 1967, c. 418, § 2, p. 1286; Laws 1969, c. 547, § 1, p. 2202; Laws 1972, LB 661, § 79; Laws 1972, LB 1401, § 1; Laws 1973, LB 364, § 1; Laws 1975, LB 453, § 57; Laws 1981, LB 181, § 13; Laws 1982, LB 198, § 2; Laws 1986,

LB 949, § 11; Laws 1993, LB 90, § 1; Laws 1994, LB 76, § 582; Laws 2008, LB1067, § 2.
Effective date July 18, 2008.

Cross References

Election Act, see section 32-101.

70-623 Fiscal year; annual audit; filing.

The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after December 31 of each year.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-623; Laws 1944, Spec. Sess., c. 5, § 1(6), p. 107; Laws 1967, c. 420, § 1, p. 1294; Laws 1981, LB 302, § 6; Laws 1993, LB 310, § 8; Laws 2004, LB 969, § 13.

70-626 Electric light and power, hydrogen, and ethanol systems authorized; construction; acquisition; contracts authorized; copy filed with Nebraska Power Review Board.

Subject to the limitations of the petition for its creation and all amendments thereto, a district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, any hydrogen production, storage, or distribution systems, or any ethanol production or distribution systems, either within or beyond, or partly within and partly beyond, the boundaries of the district and may engage in or transact business or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or agency, with the government of the United States, the Rural Electrification Administration or its successor, the Public Works Administration or its successor, or any officer, department, bureau, or agency thereof, with any corporation organized by federal law, including the Reconstruction Finance Corporation or its successor, or with any body politic or corporate for any of the purposes mentioned in this section, for or incident to the exercise of any one or more of the powers described in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy, hydrogen, or ethanol for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation of an existing electric light

and power plant, lines, or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system from any person, firm, association, or private corporation by any such district, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise under such contract until after such period of thirty days has expired.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(2), p. 521; R.S.1943, § 70-626; Laws 1945, c. 157, § 4, p. 518; Laws 1981, LB 181, § 17; Laws 1986, LB 1230, § 37; Laws 2005, LB 139, § 6.

70-628.01 Joint exercise of powers by districts; agreement; terms and conditions; agent; powers and duties; prudent utility practice, defined; liabilities; sale, lease, merger, or consolidation; procedure.

(1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, each district shall own an undivided interest in each such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other district or districts, and such agreement shall contain such terms, conditions, and provisions consistent with this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as may be determined by the participating districts and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all

actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in this section be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, either alone or in association with another district or districts, may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or districts with the approval of a majority of the board of directors of each district involved in the sale, lease, combination, merger, or consolidation.

Source: Laws 1943, c. 146, § 3(5), p. 523; R.S.1943, § 70-628.01; Laws 1955, c. 267, § 3, p. 844; Laws 1975, LB 62, § 1; Laws 1986, LB 1230, § 38; Laws 1990, LB 907, § 2; Laws 2005, LB 139, § 7.

70-628.02 Joint exercise of powers with municipalities and public agencies; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or outside this state, hydrogen production, storage, or distribution facilities located within this state, or ethanol production or distribution facilities within this state jointly and in cooperation with one or more other such districts, cities, or villages of this state which own or operate electrical facilities or municipal corporations or other governmental entities of other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or

distribution facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 1; Laws 1986, LB 1230, § 39; Laws 1997, LB 658, § 9; Laws 2005, LB 139, § 8.

70-628.03 Joint exercise of powers with electric cooperatives or corporations; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each district shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 2; Laws 1986, LB 1230, § 40; Laws 1997, LB 658, § 10; Laws 2005, LB 139, § 9.

70-628.04 Joint exercise of powers; agreement; terms and conditions; agent; powers and duties; liability of district.

Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity from the facility attributable to such undivided interest. Such district may enter into an agreement or agreements with respect to each such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other participants, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to

70-628.04, and 70-1002.03 as the board of directors of such district shall deem to be in the interests of such district. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry, hydrogen production industry, or ethanol production industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such district may be used for any such purpose.

Source: Laws 1975, LB 104, § 3; Laws 1986, LB 1230, § 41; Laws 1997, LB 658, § 11; Laws 1999, LB 87, § 82; Laws 2005, LB 139, § 10.

70-631 Power to borrow; repayment of indebtedness; source of funds; security for indebtedness.

Any district organized under or subject to Chapter 70, article 6, shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability, or obligation of such district for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1)

from revenue, income, receipts, and profits derived by the district from its operation and management of power plants, systems, irrigation works, hydrogen producing systems, ethanol producing systems, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it. Any district may arrange for, or put up as security for notes or other evidences of indebtedness of such district, the credit of any bank or other financial institution which has been approved by the directors of such district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-631; Laws 1944, Spec. Sess., c. 6, § 1(1), p. 110; Laws 1959, c. 316, § 3, p. 1160; Laws 1967, c. 422, § 1, p. 1297; Laws 1981, LB 181, § 21; Laws 1983, LB 11, § 1; Laws 1986, LB 1230, § 42; Laws 2005, LB 139, § 11.

70-632 Indebtedness; pledge of revenue, how made.

Any district issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness is hereby specifically authorized and empowered to pledge all or any part of the revenue which the district may derive from the sale of electrical energy, hydrogen produced for use in fuel processes, ethanol produced for fuel, storage of water, water for irrigation, radioactive material or the energy therefrom, or other service as security for the payment of the principal and interest thereon. Any such pledge of revenue shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-632; Laws 1944, Spec. Sess., c. 6, § 1(2), p. 110; Laws 1959, c. 316, § 4, p. 1161; Laws 1986, LB 1230, § 43; Laws 2005, LB 139, § 12.

70-636 District; rates; agreement with security holders.

The directors of any district organized under or subject to Chapter 70, article 6, are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, hydrogen, ethanol, or other service sold by the district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-636; Laws 1944, Spec. Sess., c. 6, § 1(7), p. 113; Laws 1959, c. 316, § 5, p. 1161; Laws 1981, LB 181, § 22; Laws 1986, LB 1230, § 44; Laws 2005, LB 139, § 13.

70-637 Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.

(1) A district shall cause estimates of the costs to be made by some competent engineer or engineers before the district enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the district, of any:

(i) Power plant or system;

(ii) Hydrogen production, storage, or distribution system;

(iii) Ethanol production or distribution system;

(iv) Irrigation works; or

(v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in the projects described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3) Notwithstanding the provisions of subsection (2) of this section and sections 70-638 and 70-639, the board of directors of the district may negotiate directly with sheltered workshops pursuant to section 48-1503.

(4)(a) The provisions of subsection (2) of this section and sections 70-638 and 70-639 relating to sealed bids shall not apply to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or section 70-638 or 70-639 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The district advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(7) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-637; Laws 1955, c. 268, § 1, p. 847; Laws 1959, c. 316, § 6, p. 1161; Laws 1967, c. 423, § 1, p. 1299; Laws 1975, LB 63, § 1; Laws 1981, LB 34, § 2; Laws 1984, LB 152, § 1; Laws 1984, LB 540, § 11; Laws 1986, LB 1230, § 45; Laws 1998, LB 1129, § 2; Laws 1999, LB 566, § 2; Laws 2005, LB 139, § 14; Laws 2007, LB636, § 6; Laws 2008, LB939, § 3.
Effective date July 18, 2008.

70-646.01 District property; alienation to private power producers prohibited; exceptions.

Except as provided in sections 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, or 70-644 to 70-653.02, the plant, property, or equipment of a public power district shall never, by sale under foreclosure, receivership, bankruptcy proceedings, outright sale, or lease, become the property or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This restriction does not apply to: (1) The exercise by a district of its rights and powers with respect to radioactive material or the energy therefrom; (2) the sales of ethanol production or distribution facilities; (3) the sales of hydrogen production, storage, or distribution facilities; (4) joint participation in any electric generation or transmission facility pursuant to sections 18-412.07 to 18-412.09 and

70-628.02 to 70-628.04; or (5) a nonprofit cooperative corporation that has provided financing for property, projects, or undertakings when such property is covered by a mortgage, pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to a district. This restriction does not apply to a sale, transfer, or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas, which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska, except that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This section shall not be construed as an expansion of the authority of public power districts to engage in telecommunications services as may otherwise be authorized by statute.

Source: Laws 1997, LB 658, § 12; Laws 2005, LB 139, § 15.

70-655 Reasonable rates required; negotiated rates authorized; conditions.

(1) Except as otherwise provided in this section, the board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges for electrical energy, water service, water storage, and for any and all other commodities, including ethanol and hydrogen, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

(2) The board of directors may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for users and consumers of electrical energy and associated services or facilities different from those of other users and consumers. Any negotiated rates, tolls, rents, and other charges for a commercial or industrial customer shall be effective for no more than five years and in no case shall such rates, tolls, rents, and charges be less than the cost of supplying such services if (a) such customer has entered an agreement with the state or any political subdivision to provide an economic development project pursuant to state or local law and (b) such economic development project has projected new or additional electrical load requirements greater than five hundred kilowatts and a minimum annual load demand factor of sixty percent during the applicable billing period. Any negotiated contract or agreement entered into pursuant to this section shall contain a provision stating that any general retail rate increase approved by the board of directors shall include the parties to a contract or agreement for a discounted rate. This subsection shall also apply to any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

(3) In order to facilitate the merger and consolidation of districts, the board of directors of a merged or consolidated district may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service

area of one or more of the predecessor districts which are different than rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. Any different rates, tolls, rents, and other charges pursuant to this subsection shall be effective for no more than five years after the date of merger or consolidation and shall be based on cost of service or other rate studies showing that adoption of dissimilar rates for consumers in otherwise similar rate classes is needed to effectuate the merger or consolidation. This subsection shall also apply in the event of a merger or consolidation of any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

Source: Laws 1933, c. 86, § 13, p. 353; Laws 1937, c. 152, § 8, p. 589; Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-655; Laws 1981, LB 181, § 26; Laws 1986, LB 1230, § 47; Laws 1995, LB 828, § 2; Laws 2001, LB 243, § 1; Laws 2005, LB 139, § 16.

Cross References

Electric Cooperative Corporation Act, see section 70-701.
Nebraska Nonprofit Corporation Act, see section 21-1901.

70-667 Plants, systems, and works; construction or operation; works of internal improvement; laws applicable; eminent domain; procedure; when available.

All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility or a privately operated hydrogen production, storage, or distribution facility. The procedure to con-

demn property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-667; Laws 1951, c. 101, § 106, p. 496; Laws 1971, LB 626, § 2; Laws 1973, LB 189, § 1; Laws 1981, LB 181, § 32; Laws 1986, LB 1230, § 49; Laws 2005, LB 139, § 17.

ARTICLE 8

RURAL POWER DISTRICTS

Section
70-802. Terms, defined.

70-802 Terms, defined.

As used in Chapter 70, article 8, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;

(2) The terms public power district and district as used in Chapter 70, article 8, each mean the same and also have the same meaning as the term public power district as applied to public corporations created under Chapter 70, article 6, and amendments thereof;

(3) Petitioner means the corporation or association which presents a petition to the Nebraska Power Review Board for the creation of a public power district pursuant to Chapter 70, article 8;

(4) Electric utility means the business of conducting or carrying on, in service to the public, any one or more of the functions or operations of generation, transmission, distribution, sale, and purchase of electrical energy, hydrogen, or ethanol for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;

(5) Electric cooperative corporation means a corporation organized under Chapter 70, article 7; and

(6) Rural area means any area not included within the boundaries of any incorporated city or village.

Source: Laws 1949, c. 196, § 2, p. 571; Laws 1981, LB 181, § 36; Laws 1986, LB 1230, § 50; Laws 2005, LB 139, § 18.

ARTICLE 14

JOINT PUBLIC POWER AUTHORITY ACT

Section
70-1402. Terms, defined.
70-1403. Legislative findings.
70-1404. Public power district; joint project authorized; limitation; study.
70-1409. Joint authority; rights and powers; enumerated.
70-1413. Joint authority project; sale of excess capacity; limitations; applicability.
70-1416. Bonds; secured by trust agreement; covenants authorized.
70-1417. Directors; establish rates and fees; limitation; pledge; lien.

70-1402 Terms, defined.

As used in the Joint Public Power Authority Act, unless the context otherwise requires:

(1) Agency shall mean any public body, authority, or commission which is engaged in the generation, transmission, or distribution of electric power and energy and which issues indebtedness;

(2) Bonds shall mean electric revenue bonds, notes, warrants, certificates, or other obligations of indebtedness of a joint authority issued under the Joint Public Power Authority Act and shall include refunding bonds and notes issued pending permanent revenue bond financing;

(3) Cost or cost of a project shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of related costs and revenue; the cost of land, land rights, rights-of-way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint authority; establishment of reserves; and all other expenditures of the joint authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of such project in operation;

(4) Governing body shall mean the board of directors of a public power district;

(5) Joint authority shall mean a public body and body corporate and politic organized in accordance with the Joint Public Power Authority Act;

(6) Public power district shall mean a public power district organized under or subject to Chapter 70, article 6; and

(7) Project shall mean any system or facilities for the generation, transmission, and transformation, or any combination thereof, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use, or services of such units, any system or facilities for the production, storage, or distribution of hydrogen, or any system or facilities for the production or distribution of ethanol.

Source: Laws 1982, LB 852, § 2; Laws 1986, LB 1230, § 51; Laws 2005, LB 139, § 19.

70-1403 Legislative findings.

The Legislature hereby finds and determines that:

(1) Certain public power districts in this state which are empowered severally to engage in the generation, transmission, and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas, have the resources and ability to facilitate the development of a hydrogen production and distribution industry, and have the resources and ability to facilitate the development of an ethanol production and distribution industry;

(2) Such public power districts owning electric distribution systems have an obligation to provide the inhabitants and customers of the district an adequate, reliable, and economical source of electric power and energy in the future;

(3) In order to enhance the economy within the state, to achieve the economies and efficiencies made possible by the proper planning, financing, and location of facilities for the generation and transmission of electric power and energy, the production, storage, and distribution of hydrogen, and the production and distribution of ethanol which are not practical for any public power district acting alone, and to ensure an adequate, reliable, and economical supply of electric power and energy, hydrogen, and ethanol to the people of this state, it is desirable for the state to authorize public power districts to jointly plan, finance, develop, own, and operate electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this state;

(4) In order for public power districts of this state to secure long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes, it is also desirable to authorize public power districts to join together to create joint authorities which can issue revenue bonds and other obligations and make loans to its member public power districts at less cost than if the individual public power district secured its own financing; and

(5) The creation of joint authorities by public power districts which own electric distribution systems, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities and the issuance of revenue bonds by such joint authorities for such purposes as provided by the Joint Public Power Authority Act is for a public use and for public purposes and is a means of achieving economies, adequacy, and reliability in the generation or transmission of electric power and energy and in the meeting of future needs of this state and its inhabitants.

Source: Laws 1982, LB 852, § 3; Laws 1986, LB 1230, § 52; Laws 2005, LB 139, § 20.

70-1404 Public power district; joint project authorized; limitation; study.

(1) A public power district may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more public power districts in this state owning electric distribution facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities or with any political subdivision or agency of this state or of any other state and may make such plans and enter into such contracts not inconsistent with the Joint Public Power Authority Act as are necessary or appropriate, except that membership of public power districts in a joint authority shall consist only of public power districts located within this state.

(2) Nothing in the Joint Public Power Authority Act shall prevent public power districts from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Source: Laws 1982, LB 852, § 4; Laws 1986, LB 1230, § 53; Laws 2005, LB 139, § 21.

70-1409 Joint authority; rights and powers; enumerated.

Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of the Joint Public Power Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, with any political subdivisions or agencies of this state or any other state or, with other joint authorities created pursuant to the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy, hydrogen, or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only electric power or energy, to produce, store, deliver, or distribute hydrogen for use in fuel processes, or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy, hydrogen, or ethanol with any joint authority, electric cooperative, any political subdivision or agency or any public or private electric utility of this state or any other state, any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper;

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine; and

(21) To sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Source: Laws 1982, LB 852, § 9; Laws 1986, LB 1230, § 54; Laws 2001, LB 827, § 17; Laws 2002, LB 1105, § 479; Laws 2005, LB 139, § 22.

70-1413 Joint authority project; sale of excess capacity; limitations; applicability.

Excess capacity or output of a project not then required by any of the members of a joint authority shall be first offered for sale or exchange pursuant

to section 70-626.01. Any sale of available capacity and energy from the joint authority's project shall only be for the period required for the joint authority to fully utilize the amount of capacity and energy originally purchased in the project. The limitations provided in this section shall not apply to the temporary sale of excess capacity and energy without the state in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements, except that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. This section shall not apply to sales of ethanol or hydrogen.

Source: Laws 1982, LB 852, § 13; Laws 1986, LB 1230, § 55; Laws 2005, LB 139, § 23.

70-1416 Bonds; secured by trust agreement; covenants authorized.

In the discretion of the board of directors of the joint authority, any bonds issued under the Joint Public Power Authority Act may be secured by a trust agreement by and between the joint authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenue derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities of a joint authority;

(2) The rents, rates, fees, and charges to be established, maintained, and collected and the use and disposal of revenue, gifts, grants, and funds received or to be received by the joint authority;

(3) The setting aside of reserves and the investment, regulation, and disposition of such reserves;

(4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds;

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds to be issued may be applied;

(6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the holders of which must consent to, and the manner in which such consent may be given;

(8) Events of default and the rights and liabilities arising from such default, the terms and conditions upon which bonds issued under the Joint Public

Power Authority Act shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants;

(11) Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

(12) The acquisition and disposal of property, except that no project or part of such project shall be mortgaged by such trust agreement or resolution, except that the same may be mortgaged in the same manner as provided for a public power district by section 70-644;

(13) Provisions for insurance and for accounting reports and the inspection and audit of such reports; and

(14) The continuing operation and maintenance of the project.

Source: Laws 1982, LB 852, § 16; Laws 1986, LB 1230, § 56; Laws 2005, LB 139, § 24.

70-1417 Directors; establish rates and fees; limitation; pledge; lien.

A two-thirds majority vote of the directors of the joint authority present, with each member casting the number of votes to which he or she is entitled, is authorized to fix, charge, and collect rents, rates, fees, and charges for electric power and energy, hydrogen, ethanol, and other services, related to the generation, transmission, and sale of electric energy, to the production, storage, or distribution of hydrogen, or to the production or distribution of ethanol. For so long as any bonds of a joint authority are outstanding and unpaid, the rents, rates, fees, and charges shall be so fixed as to provide revenue at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements, or renewals of such projects, to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenue, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint authority may be obligated to pay from such revenue by law or contract.

Any pledge made by a joint authority pursuant to the Joint Public Power Authority Act shall be valid and binding from the date the pledge is made. The revenue, securities, and other money so pledged and then held or thereafter received by the joint authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery of such pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the member district or joint authority without regard to whether such parties have notice of such lien.

Source: Laws 1982, LB 852, § 17; Laws 1986, LB 1230, § 57; Laws 2005, LB 139, § 25.

ARTICLE 17
ELECTRICAL SERVICE PURCHASE AGREEMENTS

Section
70-1701. Terms, defined.
70-1702. Purchase agreement; contents.
70-1703. Agreement; other provisions applicable.
70-1704. Ownership agreement; terms and conditions.
70-1705. Sections; how construed.

70-1701 Terms, defined.

For purposes of sections 70-1701 to 70-1705:

(1) Power has the same meaning as in section 70-601; and

(2) Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental body or subdivision of government.

Source: Laws 2004, LB 969, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-1702 Purchase agreement; contents.

Notwithstanding any other provision of Nebraska law, any public entity may enter into an agreement for the purchase of power to be generated by a project consisting of one or more electric generating facilities. A purchase agreement may contain such terms and conditions as the public entity may determine, including provisions whereby the public entity agrees to accept and pay for additional power generated by a project if another public entity that is a purchaser of power from the same project defaults or otherwise is unable to take or pay for such power. A purchase agreement may further provide that the public entity is obligated to make payments regardless of whether power is provided, produced, or delivered to the public entity or whether the project contemplated by a purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output of power from such project.

Source: Laws 2004, LB 969, § 2.

70-1703 Agreement; other provisions applicable.

Any municipality that enters into an agreement for the purchase of power containing any of the provisions described in section 70-1702 shall be deemed to have entered into such agreement under the provisions of this section and sections 18-412.06 and 70-1705. No agreement shall be deemed an agreement entered into pursuant to sections 18-412.09 and 70-1704 unless such agreement specifically states that it is entered into pursuant to such sections.

Source: Laws 2004, LB 969, § 3.

70-1704 Ownership agreement; terms and conditions.

If a public entity enters into an ownership agreement of any electric facility pursuant to section 18-412.09, the agreement may contain such terms and conditions as the public entity may determine.

Source: Laws 2004, LB 969, § 4.

70-1705 Sections; how construed.

Sections 70-1701 to 70-1705 shall be liberally construed to effectuate their purposes. The provisions of sections 70-1701 to 70-1705 shall be independent of and supplemental to any other applicable provisions of law, petition for creation, or charter.

Source: Laws 2004, LB 969, § 5.

ARTICLE 18

PUBLIC ENTITIES MANDATED PROJECT CHARGES ACT

Section

70-1801 Act, how cited.

Sections 70-1801 to 70-1817 shall be known and may be cited as the Public Entities Mandated Project Charges Act.

Source: Laws 2006, LB 548, § 1.

70-1802 Definitions, where found.

For purposes of the Public Entities Mandated Project Charges Act, the definitions found in sections 70-1803 to 70-1811 apply.

Source: Laws 2006, LB 548, § 2.

70-1803 Financing costs, defined.

Financing costs means:

(1) Interest, including, but not limited to, capitalized interest, and redemption premiums that are payable on mandated project bonds;

(2) The cost of retiring or refunding a public entity's existing debt in connection with the issuance of mandated project bonds, but only to the extent the debt was issued for the purposes of financing mandated project costs;

(3) Any cost related to the issuing and servicing of mandated project bonds, including, but not limited to, servicing fees, trustee fees, legal fees, administrative fees, bond counsel fees, bond placement or underwriting fees, remarketing fees, broker dealer fees, payments under an interest rate swap agreement, financial advisor fees, accounting or engineering report fees, and rating agency fees;

(4) Any expense associated with any bond insurance policy, credit enhancement, or other financial arrangement entered into in connection with the issuance of mandated project bonds; and

(5) The funding of one or more reserve accounts related to mandated project bonds.

Source: Laws 2006, LB 548, § 3.

70-1804 Mandate, defined.

Mandate means a requirement imposed by a statute of the United States or the State of Nebraska, a rule, a regulation, an administrative or a judicial order, a licensing requirement or condition, any agreement with or requirement of a regional transmission organization, or any consent order or agreement between the United States or the State of Nebraska, or any agency thereof, and a public entity.

Source: Laws 2006, LB 548, § 4.

70-1805 Mandated project, defined.

Mandated project means the construction, retrofitting, rebuilding, acquisition, or installation of any equipment, device, structure, improvement, process, facility, technology, or other property owned, licensed, or controlled by a public entity or operated for the benefit of a public entity through a power participation or purchase agreement, either within or outside the State of Nebraska, and used in connection with a new or existing facility related to electrical power generation, transmission, or distribution, which construction, retrofitting, rebuilding, acquisition, or installation is undertaken to satisfy a mandate, including, but not limited to, any equipment, device, structure, improvement, process, facility, technology, or other property related to environmental pollution control, safety, or useful life extension of an existing plant or facility.

Source: Laws 2006, LB 548, § 5.

70-1806 Mandated project bonds, defined.

Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity, the proceeds of which are used directly or indirectly to pay or reimburse mandated project costs and financing costs and which bonds are secured by and payable from mandated project charges.

Source: Laws 2006, LB 548, § 6.

70-1807 Mandated project charge, defined.

Mandated project charge means a charge paid by customers of a public entity to pay or reimburse the public entity for mandated project costs, including any adjustment of the charge pursuant to subdivision (1)(d) of section 70-1812, or financing costs.

Source: Laws 2006, LB 548, § 7.

70-1808 Mandated project costs, defined.

Mandated project costs means capital costs incurred or to be incurred by a public entity with respect to a mandated project, including the payment of debt service on mandated project bonds, either directly or through a power participation or purchase agreement, and any related operating expenses.

Source: Laws 2006, LB 548, § 8.

70-1809 Public entity, defined.

Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity.

Source: Laws 2006, LB 548, § 9.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-1810 Related operating expenses, defined.

Related operating expenses means any necessary operating expenses of a project or system required to be paid from the mandated project charge by an order of a court pursuant to 11 U.S.C. 928(b), as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 10.

70-1811 Special revenue, defined.

Special revenue has the definition found in 11 U.S.C. 902(2) as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 11.

70-1812 Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.

(1) A public entity may elect to pay or reimburse mandated project costs and financing costs through the use of mandated project charges. Public entities are hereby authorized to impose and collect mandated project charges as provided in the Public Entities Mandated Project Charges Act. The election to use mandated project charges shall be made and evidenced by the adoption of a resolution of the governing body of the public entity authorizing the mandated project as set forth in the public entity's capital budget. The authorizing resolution shall include the following:

(a) A statement that the project is a mandated project and a description of the mandate that will be addressed by the mandated project;

(b) A statement that the public entity is electing to pay or reimburse the mandated project costs and financing costs with mandated project charges in accordance with the Public Entities Mandated Project Charges Act;

(c) An authorization to add a separate charge to each customer's electric service bill, representing such customer's portion of the mandated project charge;

(d) A description of the financial calculation, formula, or other method that the public entity utilizes to determine the mandated project charges that customers will be required to pay for the mandated project, including a periodic adjustment method, applied at least annually, that shall be utilized by the public entity to correct for any overcollection or undercollection of such mandated project charges or any other adjustment necessary to assure payment of debt service on mandated project bonds, including, but not limited to, the adjustment of the mandated project charges to pay related operating expenses and any debt service coverage requirement. The financial calculation, formula, or other method, including the periodic adjustment method, established in the authorizing resolution pursuant to this subdivision, and the allocation of mandated project charges to and among its customers, shall be decided solely by the governing body of the public entity and shall be final and conclusive, subject to the procedures set forth in subsection (4) of this section. In no event shall the periodic adjustment method established in the authorizing resolution pursuant to this subdivision be applied less frequently than required by the governing documents of any mandated project bonds issued to finance the mandated project. Once the financial calculation, formula, or other method for determining the mandated project charges, and the periodic adjustment method, have been established in the authorizing resolution and have become final and conclusive as provided in the act, they shall not be changed; and

(e) If mandated project bonds are to be issued for the mandated project, a requirement that the public entity shall enter into a servicing agreement for the bonds with a trustee selected by the governing body and the public entity shall act as a servicing agent for purposes of collecting the mandated project charges. Money collected by the public entity, acting as a servicing agent on behalf of a trustee, shall be held for the exclusive benefit of holders of mandated project bonds.

(2) The determination of the governing body that a project is a mandated project shall be final and conclusive, and any mandated project bonds issued and mandated project charges imposed relating to such determination shall be valid and enforceable in accordance with their terms. The public entity shall require, in its authorizing resolution with respect to mandated project charges, that so long as any customer obtains electric distribution service from the public entity, the customer shall pay the mandated project charge to the public entity regardless of whether or not the customer obtains electric energy service from the public entity or another energy supplier other than the public entity. All provisions of the authorizing resolution adopted pursuant to this section shall be binding on the public entity and on any successor or assignee of the public entity.

(3) The timely and complete payment of all mandated project charges shall be a condition of receiving electric service for customers of the public entity, and

the public entity shall be authorized to use its established collection policies and all rights and remedies provided by the law to enforce payment and collection of the mandated project charges. In no event shall any customer of a public entity be entitled or authorized to withhold payment, in whole or in part, of any mandated project charges for any reason.

(4) The secretary or other duly designated officer of the governing body of the public entity shall prepare and maintain a complete record of all documents submitted to and all oral and written comments made to the governing body in connection with an authorizing resolution adopted pursuant to this section. Within ten days after adoption of an authorizing resolution, an aggrieved party may file a petition for judicial review in the Supreme Court and pay the docket fee established in section 33-103. The petition shall name the public entity as the respondent and shall be served upon the public entity in the manner provided by law for service of process. Within ten business days after service of the petition for judicial review upon the public entity, the secretary or other duly designated officer of the public entity shall prepare and file with the Clerk of the Supreme Court, at the public entity's expense, the record of all documents submitted to and all oral and written comments made to the governing body in connection with the authorizing resolution. Judicial review pursuant to this subsection shall be based solely upon the record submitted by the public entity, and briefs to the court shall be limited to determining whether the financial calculation, formula, or other method adopted by the public entity pursuant to subdivision (1)(d) of this section is a fair, reasonable, and nondiscriminatory allocation to the public entity's customers of the mandated project charges needed to pay for the mandated project. Because the process of judicial review may delay the issuance of mandated project bonds to the financial detriment of customers of the public entity, the Supreme Court shall proceed to hear and determine a petition for judicial review under this section as expeditiously as practicable and shall give the matter precedence over other civil matters on the docket. The authorizing resolution shall become final and conclusive if there is no petition for judicial review filed within the time set forth in this subsection or upon the effective date of the court's decision in favor of the public entity. If the court rules against the public entity on a petition for judicial review under this subsection, the public entity's authorizing resolution shall be void and of no further force or effect.

For purposes of this subsection, aggrieved party means a retail customer of the public entity that receives electric service pursuant to a published rate schedule.

Source: Laws 2006, LB 548, § 12.

70-1813 Issuance of mandated project bonds; authorized; proceeds; use.

(1) A public entity has the authority to issue mandated project bonds, including refunding bonds, in one or more series. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to

payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The public entity and any successor or assignee of the public entity shall be obligated to impose and collect the mandated project charges in amounts sufficient to pay debt service on the mandated project bonds as due. The pledge of mandated project charges shall be irrevocable, and the state, the public entity, or any successor or assignee of the public entity may not reduce, impair, or otherwise adjust mandated project charges, except that the public entity and any successor or assignee thereof shall implement the periodic adjustment method established by the authorizing resolution pursuant to subdivision (1)(d) of section 70-1812. Revenue from mandated project charges shall be deemed special revenue and shall not constitute revenue of the public entity for purposes of any pledge of revenue, receipts, or other income that such public entity has made or will make for the security of debt other than the mandated project bonds to which the revenue from the mandated project charges is expressly pledged.

Source: Laws 2006, LB 548, § 13.

Cross References

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

70-1814 Mandated project charges; use.

Mandated project charges shall be applied exclusively for the purpose of paying mandated project costs, including any adjustments of such charges pursuant to subdivision (1)(d) of section 70-1812, and financing costs.

Source: Laws 2006, LB 548, § 14.

70-1815 Public entity; discretionary actions.

A public entity undertaking a mandated project is not required to pay or reimburse the costs of the mandated project with mandated project charges, and such public entity is not required to issue mandated project bonds. The use of mandated project charges and issuance of mandated project bonds are elective actions wholly within the discretion of the public entity.

Source: Laws 2006, LB 548, § 15.

70-1816 Public entity collecting mandated project charges; billing explanation required.

A public entity collecting mandated project charges shall annually provide its customers with a concise explanation of mandated project charges billed to customers. Such explanation may be by billing insert, web site information, or other appropriate means.

Source: Laws 2006, LB 548, § 16.

70-1817 Act and grants of power; how construed.

The Public Entities Mandated Project Charges Act and all grants of power and authority in the act shall be liberally construed to effectuate their purpose,

and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon public entities.

Source: Laws 2006, LB 548, § 17.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section

70-1901 Act, how cited.

Sections 70-1901 to 70-1909 shall be known and may be cited as the Rural Community-Based Energy Development Act.

Source: Laws 2007, LB629, § 1.

70-1902 Legislative intent.

It is the intent of the Legislature to create new rural economic development opportunities through rural community-based energy development.

Source: Laws 2007, LB629, § 2.

70-1903 Terms, defined.

For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska; and

(3) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Source: Laws 2007, LB629, § 3; Laws 2008, LB916, § 1.
Operative date October 1, 2008.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.

70-1904 C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

(1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner, if not more than sixty-seven percent of the power purchase agreement payments flow to the nonqualified owners.

(3) Except for an inherited interest, the transfer of a C-BED project to any person other than a qualified owner is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Source: Laws 2007, LB629, § 4; Laws 2008, LB916, § 2.
Operative date October 1, 2008.

70-1905 Electric utility; duties.

An electric utility shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area;

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement; and

(3) Annually prepare a statement by March 1 summarizing its efforts to purchase energy from C-BED projects, including a list of the C-BED projects under a power purchase agreement and the amount of C-BED project energy purchased. The statement shall be posted on the electric utility's web site.

Source: Laws 2007, LB629, § 5; Laws 2008, LB916, § 3.
Operative date October 1, 2008.

70-1906 Construction of new renewable generation facilities; electric utility; governing body; duties.

The governing body of an electric utility that has determined a need to construct new renewable generation facilities shall take reasonable steps to determine if one or more C-BED projects are available and are technically, economically, and operationally feasible to provide some or all of the identified generation need.

Source: Laws 2007, LB629, § 6.

70-1907 C-BED project developer; provide ownership opportunity to property owner.

To the extent feasible, a C-BED project developer shall provide, in writing, an opportunity to become a qualified owner in the C-BED project to each property owner on whose property a turbine will be located.

Source: Laws 2007, LB629, § 7; Laws 2008, LB916, § 4.
Operative date October 1, 2008.

70-1908 Sections; how construed.

Nothing in sections 70-1901 to 70-1907 shall be construed to obligate an electric utility to enter into a power purchase agreement under a C-BED project.

Source: Laws 2007, LB629, § 8.

70-1909 Electric supplier; limit on eminent domain.

An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project which is a renewable energy generation facility producing electricity with wind and any

related facilities if such electric supplier enters into a contract to purchase output from such facility for a term of ten years or more.

Source: Laws 2007, LB629, § 9.

CHAPTER 71
PUBLIC HEALTH AND WELFARE

Article.

Article.
7. Women's Health. 71-701 to 71-707.
8. Behavioral Health Services. 71-801 to 71-820.
9. Nebraska Mental Health Commitment Act. 71-901 to 71-962.
10. State Anatomical Board, Disposal of Dead Bodies. 71-1001, 71-1002.
11. Developmental Disabilities Court-Ordered Custody Act. 71-1101 to 71-1134.
12. Sex Offender Commitment and Treatment.
    (a) Sex Offender Treatment Act. 71-1201 to 71-1226.
    (b) Treatment and Management Services. 71-1227, 71-1228.
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. 71-1356 to 71-1373.
14. Medically Handicapped Children. 71-1405.
15. Housing.
    (c) Modular Housing Units. 71-1557 to 71-1567.
16. Local Health Services.
    (a) Health Districts in Counties Having a Population of More than 200,000. 71-1617.
    (b) Local Public Health Departments. 71-1626 to 71-1636.
    (c) Community and Home Health Services. 71-1637.
17. Nurses.
    (b) Nurse Practitioner Act. 71-1704 to 71-1726.02. 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.
    (f) Licensed Practical Nurse-Certified. 71-1772 to 71-1794. Transferred or Repealed.
    (h) Nebraska Center for Nursing Act. 71-1796 to 71-17,100.
    (i) Nursing Student Loan Act. 71-17,102.
    (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. 71-1802 to 71-1804.
19. Care of Children.
    (a) Foster Care Licensure. 71-1901, 71-1903.
    (b) Child Care Licensure. 71-1908 to 71-1923.
20. Hospitals.
    (a) Survey and Construction. 71-2002 to 71-2015.
    (h) Uniform Billing Forms. 71-2081, 71-2082.
    (j) Receivers. 71-2084 to 71-2096.
    (k) Medicaid Program Violations. 71-2097 to 71-20,101.
    (l) Nonprofit Hospital Sale Act. 71-20,103, 71-20,113.
21. Infants. 71-2101 to 71-2104.
22. Maternal and Child Health. 71-2201 to 71-2225.
23. Nebraska Prostitution Intervention and Treatment Act. 71-2301 to 71-2305.
24. Drugs.
    (b) Mail Service Pharmacy Licensure Act. 71-2407 to 71-2409.
    (c) Emergency Box Drug Act. 71-2411, 71-2412.
    (d) Pain Management. 71-2418 to 71-2420.
    (e) Return of Dispensed Drugs and Devices. 71-2421.
    (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.
25. Poisons.
    (a) General Provisions. 71-2503 to 71-2511.
26. State Board of Health. 71-2610 to 71-2622.
28. Physical Therapy. Transferred or Repealed.

Article.
31. Recreation Camps. 71-3101 to 71-3104.
33. Fluoridation. 71-3305, 71-3306.
34. Reduction in Morbidity and Mortality.
    (a) General Provisions. 71-3401, 71-3402.
    (b) Child Deaths. 71-3406, 71-3410.
35. Radiation Control and Radioactive Waste.
    (a) Radiation Control Act. 71-3501 to 71-3519.
    (c) High-Level Radioactive Waste and Transuranic Waste. 71-3524, 71-3526.
    (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.
43. Swimming Pools. 71-4302 to 71-4306.
44. Rabies. 71-4401 to 71-4412.
46. Manufactured Homes, Recreational Vehicles, and Mobile Home Parks.
    (a) Manufactured Homes and Recreational Vehicles. 71-4603 to 71-4608.
    (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. 71-4728, 71-4728.05.
    (c) Infant Hearing Act. 71-4737 to 71-4744.
48. Anatomical Gifts.
    (a) Uniform Anatomical Gift Act. 71-4807, 71-4810.
    (b) Miscellaneous Provisions. 71-4813, 71-4816.
    (c) Bone Marrow Donations. 71-4819.
    (d) Donor Registry of Nebraska. 71-4822, 71-4823.
50. Mental Health and Substance Abuse Services.
    (a) Community Mental Health Services. 71-5001 to 71-5015. Repealed.
    (b) Alcoholism, Drug Abuse, and Addiction Services. 71-5016 to 71-5040. Repealed.
    (c) Minors; Alcohol or Drug Abuse Counseling or Treatment. 71-5041. Repealed.
    (d) Rehabilitation and Support Mental Health Services Incentive Act. 71-5042 to 71-5052. Repealed.
    (e) Behavioral Health Community-Based Services. 71-5053 to 71-5057. Repealed.
    (f) Nebraska Behavioral Health Reform Act. 71-5058 to 71-5066. Repealed.
51. Emergency Medical Services.
    (c) Emergency Medical Services Act. 71-5172 to 71-51,100. 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. 71-5205.
53. Drinking Water.
    (a) Nebraska Safe Drinking Water Act. 71-5301 to 71-5313.
    (b) Drinking Water State Revolving Fund Act. 71-5318, 71-5322.
54. Drug Product Selection. 71-5402 to 71-5404.
56. Rural Health.
    (c) Office of Rural Health. 71-5647, 71-5649.
    (d) Rural Health Systems and Professional Incentive Act. 71-5651 to 71-5668.
    (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.
    (d) Nebraska Clean Indoor Air Act. 71-5716 to 71-5734.
58. Health Care; Certificate of Need. 71-5803.04 to 71-5859.
59. Assisted-Living Facility Act. 71-5901 to 71-5908.
60. Nursing Homes.
    (b) Nebraska Nursing Home Act. 71-6010 to 71-6021.
    (c) Training Requirements. 71-6038 to 71-6042.
    (d) Nursing Home Advisory Council. 71-6043 to 71-6048.
    (e) Nursing Home Administration. 71-6053 to 71-6068. Transferred or Repealed.

ARTICLE 1

LICENSES; PROFESSIONAL AND OCCUPATIONAL

(a) DEFINITIONS

(b) LICENSES AND CERTIFICATES

(c) PROFESSIONAL BOARDS

Section
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.
71-123. Repealed. Laws 2007, LB 463, § 1319.
71-124. Transferred to section 38-172.
71-124.01. Transferred to section 38-141.

(d) EXAMINATIONS

71-125. Transferred to section 38-132.
71-128. Transferred to section 38-133.
71-129. Transferred to section 38-135.
71-131. Transferred to section 38-136.
71-132. Repealed. Laws 2007, LB 463, § 1319.
71-133. Transferred to section 38-134.
71-138. Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

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.

(f) REVOCATION OF LICENSES AND CERTIFICATES

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.
71-155.03. 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.
71-161.01. 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.
71-161.09. 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.

Section
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.

(g) FEES

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.

(h) VIOLATIONS, CRIMES, PUNISHMENT

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.

(i) ENFORCEMENT PROVISIONS

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.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01. Transferred to section 38-175.
71-172.02. Repealed. Laws 2007, LB 463, § 1319.

(k) PRACTICE OF PODIATRY

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.
71-176.03. Repealed. Laws 2007, LB 463, § 1319.

(l) PRACTICE OF CHIROPRACTIC

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.
71-181. Transferred to section 38-809.
71-182. Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

71-183. Transferred to section 38-1115.

Section
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.
71-188. 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.
71-193.01. 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.
71-193.13. 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.

(o) PRACTICE OF MEDICINE AND SURGERY

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.
71-1,104.06. 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. Medicine and surgery; examination; retaking examination; time.
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.

Section
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.
71-1,107.23. 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.

(p) PRACTICE OF NURSING

71-1,132.01. Transferred to section 38-2201.
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.
71-1,132.24. 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.
71-1,132.35. 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.
71-1,132.41. Transferred to section 38-2230.
71-1,132.48. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.53. Repealed. Laws 2007, LB 463, § 1319.

(q) PRACTICE OF OPTOMETRY

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.

Section
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.
71-1,136.03. 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.

(r) PRACTICE OF OSTEOPATHY

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.
71-1,141. Transferred to section 38-2033.

(s) PRACTICE OF PHARMACY

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.
71-1,146. 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.
71-1,147.13. Transferred to section 38-28,103.
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.
71-1,147.42. Transferred to section 38-2875.
71-1,147.43. Transferred to section 38-2876.

Section
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.
71-1,147.50. Transferred to section 38-2882.
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.
71-1,147.59. Transferred to section 38-2889.
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.
71-1,151. Repealed. Laws 2007, LB 463, § 1319.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

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.
71-1,157. Transferred to section 38-3323.
71-1,158. Transferred to section 38-3322.
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.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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.
71-1,195.01. 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.

Section
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.

(v) INSURER REPORT VIOLATIONS

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.

(w) PRACTICE OF PSYCHOLOGY

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.
71-1,206.14. 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.

(x) PRACTICE OF RESPIRATORY CARE

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.
71-1,233. 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.

Section

(y) PRACTICE OF ATHLETIC TRAINING

71-1,238. Transferred to section 38-402.
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.

(bb) PRACTICE OF MASSAGE THERAPY

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.

(cc) MEDICAL NUTRITION THERAPY

71-1,285. Transferred to section 38-1802.
71-1,286. Transferred to section 38-1803.
71-1,287. Transferred to section 38-1812.
71-1,289. 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.

(dd) MENTAL HEALTH PRACTITIONERS

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.

Section
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.
71-1,335. 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.

(ee) REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

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

(ff) HEALTH CARE CREDENTIALING

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.

(gg) PRACTICE OF ACUPUNCTURE

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.

(hh) ALCOHOL AND DRUG COUNSELING

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.

(ii) PHYSICAL THERAPY PRACTICE ACT

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.

Section
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.

(jj) PERFUSION PRACTICE ACT

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.

(a) DEFINITIONS

71-101 Transferred to section 38-101.

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

(b) LICENSES AND CERTIFICATES

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.

71-110 Transferred to section 38-142.

71-110.01 Transferred to section 38-143.

(c) PROFESSIONAL BOARDS

71-111 Transferred to section 38-158.

71-112 Transferred to section 38-167.

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

71-112.03 Transferred to section 38-161.

71-113 Transferred to section 38-162.

71-114 Transferred to section 38-164.

71-115.01 Transferred to section 38-168.

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.

71-123 Repealed. Laws 2007, LB 463, § 1319.

71-124 Transferred to section 38-172.

71-124.01 Transferred to section 38-141.

(d) EXAMINATIONS

71-125 Transferred to section 38-132.

71-128 Transferred to section 38-133.

71-129 Transferred to section 38-135.

71-131 Transferred to section 38-136.

71-132 Repealed. Laws 2007, LB 463, § 1319.

71-133 Transferred to section 38-134.

71-138 Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

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.

(f) REVOCATION OF LICENSES AND CERTIFICATES

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.

71-155.03 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.

71-161.01 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.

71-161.09 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.

(g) FEES

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.

(h) VIOLATIONS, CRIMES, PUNISHMENT

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.

(i) ENFORCEMENT PROVISIONS

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.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01 Transferred to section 38-175.

71-172.02 Repealed. Laws 2007, LB 463, § 1319.

(k) PRACTICE OF PODIATRY

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.

71-176.03 Repealed. Laws 2007, LB 463, § 1319.

(l) PRACTICE OF CHIROPRACTIC

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.

71-181 Transferred to section 38-809.

71-182 Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

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.

71-188 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.

71-193.01 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.

71-193.13 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.

(o) PRACTICE OF MEDICINE AND SURGERY

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.

71-1,104.06 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 Medicine and surgery; examination; retaking examination; time.

Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine. All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

Source: Laws 2007, LB481, § 4.

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.

71-1,107.23 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.

(p) PRACTICE OF NURSING

71-1,132.01 Transferred to section 38-2201.

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.

71-1,132.24 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.

71-1,132.35 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.

71-1,132.41 Transferred to section 38-2230.

71-1,132.48 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.53 Repealed. Laws 2007, LB 463, § 1319.

(q) PRACTICE OF OPTOMETRY

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.

71-1,136.03 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.

(r) PRACTICE OF OSTEOPATHY

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.

71-1,141 Transferred to section 38-2033.

(s) PRACTICE OF PHARMACY

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.

71-1,146 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.

71-1,147.13 Transferred to section 38-28,103.

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.

71-1,147.42 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.

71-1,147.50 Transferred to section 38-2882.

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

71-1,147.59 Transferred to section 38-2889.

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.

71-1,151 Repealed. Laws 2007, LB 463, § 1319.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

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.

71-1,157 Transferred to section 38-3323.

71-1,158 Transferred to section 38-3322.

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.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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.

71-1,195.01 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.

(v) INSURER REPORT VIOLATIONS

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.

(w) PRACTICE OF PSYCHOLOGY

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.

71-1,206.14 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.

(x) PRACTICE OF RESPIRATORY CARE

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.

71-1,233 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.

(y) PRACTICE OF ATHLETIC TRAINING

71-1,238 Transferred to section 38-402.

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.

(bb) PRACTICE OF MASSAGE THERAPY

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.

(cc) MEDICAL NUTRITION THERAPY

71-1,285 Transferred to section 38-1802.

71-1,286 Transferred to section 38-1803.

71-1,287 Transferred to section 38-1812.

71-1,289 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.

(dd) MENTAL HEALTH PRACTITIONERS

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.

71-1,335 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.

(ee) REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

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

(ff) HEALTH CARE CREDENTIALING

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.

(gg) PRACTICE OF ACUPUNCTURE

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.

(hh) ALCOHOL AND DRUG COUNSELING

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.

(ii) PHYSICAL THERAPY PRACTICE ACT

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.

(jj) PERFUSION PRACTICE ACT

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

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

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.

ARTICLE 3
NEBRASKA COSMETOLOGY ACT

Section
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.
71-361.01. 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.
71-368. 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.

Section
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.
71-385. 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.
71-3,112. Repealed. Laws 2007, LB 463, § 1319.
71-3,115. Repealed. Laws 2007, LB 463, § 1319.
71-3,117. Transferred to section 38-1077.
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.

Section
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.

Section
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.
71-3,202. Repealed. Laws 2007, LB 463, § 1319.
71-3,205. Repealed. Laws 2007, LB 463, § 1319.
71-3,206. Transferred to section 38-10,137.
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.
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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.

71-340 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.

71-361.01 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.

71-368 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.

71-385 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.

71-3,112 Repealed. Laws 2007, LB 463, § 1319.

71-3,115 Repealed. Laws 2007, LB 463, § 1319.

71-3,117 Transferred to section 38-1077.

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.

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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.

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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.

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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.

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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.

71-3,202 Repealed. Laws 2007, LB 463, § 1319.

71-3,205 Repealed. Laws 2007, LB 463, § 1319.

71-3,206 Transferred to section 38-10,137.

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.

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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

Section

Section
71-463. Repealed. Laws 2004, LB 1005, § 144.

71-401 Act, how cited.

Sections 71-401 to 71-459 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.

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.

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.
Operative date April 1, 2008.

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.

71-414 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, or a respite care 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.

71-425 Pharmacy, defined.

Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, 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.

Cross References

Pharmacy Practice Act, see section 38-2801.

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.

71-428 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 group home or child-caring agency under sections 71-1901 to 71-1906.01;

(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.

Cross References

Child Care Licensing Act, see section 71-1908.

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 the mentally retarded, 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.

71-445 Discrimination or retaliation prohibited.

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.

Source: Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372.

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;

(10) Failure to file a report required by section 38-1,127;

(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; or

(13) Violation of the Automated Medication Systems Act.

Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181; Laws 2008, LB308, § 12.
Operative date April 22, 2008.

Cross References

Assisted-Living Facility Act, see section 71-5901.
Automated Medication Systems Act, see section 71-2444.
Emergency Box Drug Act, see section 71-2410.
Medication Aide Act, see section 71-6718.
Nebraska Nursing Home Act, see section 71-6037.

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.

71-460 Transferred to section 71-5903.

71-461 Transferred to section 71-5904.

71-463 Repealed. Laws 2004, LB 1005, § 144.

ARTICLE 5

DISEASES

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

(c) METABOLIC DISEASES

(e) IMMUNIZATION AND VACCINES

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

(h) EXCHANGE OF IMMUNIZATION INFORMATION

(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.

Cross References

Health districts in counties over 200,000 population, see sections 71-1601 to 71-1625.

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.

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, (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, (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.

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.

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.

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.

Cross References

Health districts in counties over 200,000 population, see sections 71-1601 to 71-1625.

71-503.01 Reports required; confidentiality; limitations on use; immunity.

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 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 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 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.

In order to further the protection of public health, such reports and notifications 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. 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.

The appropriate board, health department, agency, or official may: (1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (2) discuss the report or notification with the attending physician; and (3) make such investigation as deemed necessary.

Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications shall be immune from suit for slander or libel or breach of

privileged communication based on any statements contained in such reports and notifications.

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.

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.

71-507 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, 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.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

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.

71-514.02 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.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

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; and

(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 of Health and Human Services to examine the records.

Source: Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387.

71-516.03 Alzheimer's special care unit, defined.

For the purposes of the Alzheimer's Special Care Disclosure Act, Alzheimer's special care unit shall mean any nursing facility or assisted-living facility, licensed by the Department of Health and Human Services, 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.

Source: Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388.

71-516.04 Facility; disclosures required; department; duties.

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 of Health and Human Services 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.

The information disclosed shall explain the additional care provided in each of the following areas:

(1) 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;

(2) The process and criteria for placement in, transfer to, or discharge from the unit;

(3) 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;

(4) Staff training and continuing education practices;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs; and

(8) The costs of care and any additional fees.

Source: Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389.

(c) METABOLIC 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, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, medium-chain acyl co-a dehydrogenase (MCAD) deficiency, and such other metabolic 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 metabolic 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, including, but not limited to, lamination. 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, or such other metabolic 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.

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 metabolic 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.

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.

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 metabolic 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.

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 metabolic 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 ten 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.

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.

(e) IMMUNIZATION AND VACCINES

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 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;

(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.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

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.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

71-541 Immunization information; sharing authorized.

A physician, an advanced practice registered nurse practicing under and in accordance with his or her applicable certification act, a physician assistant, a pharmacist, a licensed health care facility, a public immunization clinic, a local or district health department, and the Department of Health and Human Services may share immunization information which is not restricted under section 71-540. The unrestricted immunization information shared may include, but is not limited to, the patient's name, date of birth, dates and vaccine types administered, and any immunization information obtained from other sources.

Source: Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398.

71-542 Immunization information; access by child care providers and schools; confidentiality; violation; penalty; fees.

(1) Immunization information which is not restricted under section 71-540 concerning children enrolled in a child care program licensed pursuant to the Child Care Licensing Act, a school, or a postsecondary educational institution may be accessed by the program, school, or institution from any of the persons or entities described in section 71-541, subject to security provisions to be set by rule and regulation as provided in section 71-543. Such immunization

information is limited to the child's name, date of birth, immunization provider, and all dates of immunization by vaccine type documented in the immunization information. The access to immunization information by such a licensed program, school, or institution under this section does not change a parent's or legal guardian's right to access medical information about his or her child or ward.

(2) Immunization information received under this section is confidential, except that a child's immunization information received under this section may be disclosed to the child's parents or legal guardian. Unauthorized public disclosure of such confidential information by an individual or an officer or employee of a child care program licensed pursuant to the Child Care Licensing Act, a school, or a postsecondary educational institution is a Class III misdemeanor.

(3) The person or entity described in section 71-541 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution in accordance with this section may charge a reasonable fee to recover the cost of providing such immunization information.

Source: Laws 1998, LB 1063, § 14; Laws 2004, LB 1005, § 54.

Cross References

Child Care Licensing Act, see section 71-1908.

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 access to and security of the immunization information.

Source: Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399.

(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.

ARTICLE 6
VITAL STATISTICS

Section

Section

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.

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;

(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; and

(4) Department means the Department of Health and Human Services.

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.

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 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 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.

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.

71-604.05 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 food stamp 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.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

(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 who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician shall have the responsibility and duty to complete and sign in his or her own handwriting or 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 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 in his or her own handwriting or 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, 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.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed 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 a 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 next of kin of the deceased, as listed in section 38-1425, 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.

Cross References

For authority of chiropractors to sign death certificates, see section 38-811.

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.

71-606 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.
Effective date April 17, 2008.

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 eleven 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 two 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.

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; failure; penalty.

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 shall be furnished by the petitioner or his or her legal representative and presented to the clerk of the court with the petition. In all cases, the furnishing of the information to complete the record shall be a prerequisite to the granting of the final decree. 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. Upon neglect or refusal to make such return, such clerk shall, for each neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the county.

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.

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.

71-616.03 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.

71-617.02 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.

71-617.05 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.

71-626 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 depart-

ment. 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.

71-634 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.

71-636 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.

71-639 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.

71-640.01 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.

Cross References

Child's surname, see section 71-640.03.

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.

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.

71-644 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.
71-705. 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

executive director of the Nebraska Commission on the Status of Women or his or her designee, the chief medical officer if one is appointed under section 81-3115, and the Title V Director 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.

(8) The advisory council terminates on December 31, 2009.

Source: Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449.
Termination date December 31, 2009.

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.

71-705 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 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.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Section

Section
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. Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.
71-817. Compulsive Gamblers Assistance Fund; created; use; investment.
71-818. Behavioral Health Oversight Commission; created; members; duties; expenses; termination.
71-819. Repealed. Laws 2006, LB 994, § 162.
71-820. Repealed. Laws 2006, LB 994, § 162.

71-801 Act, how cited.

Sections 71-801 to 71-818 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.

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, the State Alcoholism and Drug Abuse Advisory Committee, and the Nebraska Advisory Commission on Compulsive Gambling; (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.

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 em-

phasize 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, problem gambling, 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.

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 and reimbursement methodologies for behavioral health services and fees 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; and (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.

(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.

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 communi-

ty-based behavioral health services after July 1, 2004, shall be excluded from any calculation of county matching funds under this subsection.

Source: Laws 2004, LB 1083, § 8.

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) administration 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) 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.

(3) 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.

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. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services. The Behavioral Health Oversight Commission shall review such documentation and shall report to the Governor and the Health and Human Services Committee of the Legislature whether, in its opinion, the requirements of subsection (2) of this section have been met with respect to such intended reduction or discontinuation of regional center services and shall enumerate the criteria used by the commission in making such determination.

(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) When the occupancy of the licensed psychiatric hospital beds of any regional center reaches twenty percent or less of its licensed psychiatric hospital bed capacity on March 15, 2004, the division shall notify the Governor and the Legislature of such fact. Upon such notification, the division, with the approval of a majority of members of the Executive Board of the Legislative Council, may provide for the transfer of all remaining patients at such center to appropriate community-based services or other regional center services pursuant to this section and cease the operation of such regional center.

(7) The division, in consultation with each regional behavioral health authority, shall establish and maintain a data and information system for all persons receiving state-funded behavioral health services under the Nebraska Behavioral Health Services Act. Information maintained by the division shall include, but not be limited to, (a) the number of persons receiving regional center services, (b) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving regional center services, (c) the number of persons ordered by a mental health board to receive inpatient or

outpatient treatment and receiving community-based services, (d) the number of persons voluntarily admitted to a regional center and receiving regional center services, (e) the number of persons waiting to receive regional center services, (f) the number of persons waiting to be transferred from a regional center to community-based services or other regional center services, (g) the number of persons discharged from a regional center who are receiving community-based services or other regional center services, and (h) the number of persons admitted to behavioral health crisis centers. Each regional behavioral health authority shall provide such information as requested by the division and necessary to carry out this subsection. The division shall submit reports of such information to the Governor and the Legislature on a quarterly basis beginning July 1, 2005, in a format which does not identify any person by name, address, county of residence, social security number, or other personally identifying characteristic.

(8) 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.
Operative date April 22, 2008.

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 Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.

(1) The Legislature finds that the main sources of funding for the Compulsive Gamblers Assistance Fund are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812 and Article III, section 24, of the Constitution of Nebraska. It is the intent of the Legislature that the Compulsive Gamblers Assistance Fund be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

(2) The State Committee on Problem Gambling is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of problem gambling and addiction 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 problem gambling or addiction services. The committee shall appoint one of its members as chairperson of the committee and other officers as it deems appropriate. The committee shall conduct regular meetings and shall meet upon the call of the chairperson or a majority of its members to conduct its official business.

(3) The committee shall develop and recommend to the division guidelines and standards for the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund. Such guidelines and standards shall be based

on nationally recognized standards for compulsive gamblers assistance programs.

(4) In addition, the committee shall develop recommendations regarding (a) the evaluation and approval process for provider applications and contracts for treatment funding from the Compulsive Gamblers Assistance Fund, (b) the review and use of evaluation data, (c) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (d) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents. The committee may engage in other activities it finds necessary to carry out its duties under this section.

(5) Based on the recommendations of the committee, the division shall adopt guidelines and standards for the distribution and disbursement of money in the fund and for administration of problem gambling and addiction services in Nebraska.

(6) The division and the committee shall jointly submit a report within sixty days after the end of each fiscal year to the Legislature and the Governor that provides details of the administration of services and distribution of funds.

Source: Laws 2004, LB 1083, § 16; Laws 2005, LB 551, § 6; Laws 2006, LB 994, § 95; Laws 2008, LB1058, § 1.
Effective date April 15, 2008.

71-817 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The division shall administer the fund for the treatment of problem gamblers as recommended by the State Committee on Problem Gambling established under section 71-816 and shall spend no more than ten percent of the money appropriated to the fund for administrative costs. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the division. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of gamblers assistance programs, and to pay the costs and expenses of the division and the committee with regard to problem gambling. The division shall not provide any direct services to problem gamblers or their families. Funds appropriated from the Compulsive Gamblers Assistance Fund shall not be granted or loaned to or administered by any regional behavioral health authority unless the authority is a direct provider of a problem gamblers assistance program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB

541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2.
Effective date April 15, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-818 Behavioral Health Oversight Commission; created; members; duties; expenses; termination.

(1)(a) The Behavioral Health Oversight Commission is created.

(b) Until June 30, 2008, the commission shall consist of not more than twenty-five members appointed by the chairperson of the Health and Human Services Committee of the Legislature and confirmed by a majority of members of the committee, and members of the commission shall (i) include, but not be limited to, representatives of the Legislature, consumers and consumer advocacy organizations, behavioral health providers, the communities of Norfolk and Hastings, state employees, regional behavioral health authorities, mental health boards, and law enforcement, (ii) possess a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of behavioral health services in the State of Nebraska, and (iii) be broadly representative of all the behavioral health regions.

(c) Beginning on July 1, 2008, the members of the commission shall possess a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of behavioral health services in the State of Nebraska, and the commission shall consist of twelve members appointed by the Governor as follows: (i) One consumer of behavioral health services, (ii) one consumer advocate of behavioral health services, (iii) three providers of community-based behavioral health services, including one representative from each congressional district, (iv) three regional behavioral health authority administrators, including one from each congressional district, (v) one representative of the Norfolk Regional Center, (vi) one representative of the Lincoln Regional Center, (vii) one representative of the city of Norfolk, and (viii) one representative of the city of Hastings.

(d) Members of the commission shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2)(a) Until June 30, 2008, the commission, under the direction of and in consultation with the Health and Human Services Committee of the Legislature, shall oversee and support implementation of the Nebraska Behavioral Health Services Act and shall administer such funds as appropriated by the Legislature from the Nebraska Health Care Cash Fund for such purpose, and the commission may employ staff, enter into contracts, establish and utilize task forces and subcommittees, and perform such other activities as necessary and appropriate to carry out its duties under this section.

(b) Beginning on July 1, 2008, the commission shall be responsible to the division and shall oversee and support implementation of the Nebraska Behavioral Health Services Act. To carry out this duty, the commission shall (i) conduct regular meetings, (ii) provide advice and assistance to the division relating to the implementation of the act, (iii) promote the interests of consum-

ers and their families, (iv) provide reports as requested by the division, and (v) engage in such other activities as directed or authorized by the division.

(3) To assist the commission in its role of oversight, the division shall provide the commission with a quarterly report regarding the implementation of the Nebraska Behavioral Health Services Act.

(4) The commission and this section terminate on June 30, 2009.

Source: Laws 2004, LB 1083, § 18; Laws 2005, LB 551, § 8; Laws 2008, LB928, § 18.
Operative date April 22, 2008.
Termination date June 30, 2009.

71-819 Repealed. Laws 2006, LB 994, § 162.

71-820 Repealed. Laws 2006, LB 994, § 162.

ARTICLE 9

NEBRASKA MENTAL HEALTH COMMITMENT ACT

Section
71-901. Act, how cited.
71-902. Declaration of purpose.
71-903. Definitions, where found.
71-904. Administrator, 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.
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.

Section

71-901 Act, how cited.

Sections 71-901 to 71-962 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.

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.

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.

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.

71-905 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 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.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Uniform Credentialing Act, see section 38-101.

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.

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.

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 physiological 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 social worker, a psychiatric nurse, a clinical 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.

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.

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.

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.

Cross References

Sheriff, mileage and fees, see section 83-337.

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.

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.

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.

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.

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.

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.

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.

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 Office of Parole Administration 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.

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.

ARTICLE 10

STATE ANATOMICAL BOARD, DISPOSAL OF DEAD BODIES

Section
71-1001. State Anatomical Board; members; powers and duties.
71-1002. Board; dead human bodies subject to burial or cremation at public expense; delivery to board; claimant of body; requirements.

71-1001 State Anatomical Board; members; powers and duties.

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.

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.

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.

ARTICLE 11

DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT

Section

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.

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.

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 mental retardation or a severe chronic cognitive impairment, other than mental illness, that is manifested before the age of twenty-two years and is likely to continue indefinitely.

Source: Laws 2005, LB 206, § 7.

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.

71-1109 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 Mental retardation, defined.

Mental retardation means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which originates in the developmental period.

Source: Laws 2005, LB 206, § 10.

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 Severe chronic cognitive impairment, defined.

Severe chronic cognitive impairment means clinically significant difficulties in the ability to remember, think, perceive, apply sound judgment, and adequately use deductive reasoning not attributable to a mental illness.

Source: Laws 2005, LB 206, § 13.

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.

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.

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 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.

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 alternative 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 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.

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.

The department shall submit 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.

ARTICLE 12

SEX OFFENDER COMMITMENT AND TREATMENT

(a) SEX OFFENDER TREATMENT ACT

Section

(a) SEX OFFENDER TREATMENT 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.

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.

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.

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 suggest-

ed 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.

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.

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 Sex offender treatment and management services; qualifications and training; legislative intent.

In 2001, the Governor's Working Group on the Management and Treatment of Sex Offenders issued its final report making recommendations for legislative and administrative changes in providing services for the management and treatment of sex offenders. It is the intent of the Legislature that those who are responsible for the treatment of sex offenders possess the necessary qualifications and training to provide sex-offender-specific therapy.

Source: Laws 2006, LB 1199, § 107.

71-1228 Sex offender treatment and management services; Director of Regulation and Licensure; duties; working group; members; report; termination.

(1) The Director of Regulation and Licensure shall establish a working group to study sex offender treatment and management services and recommend improvements. The working group shall include a member of the Legislature appointed by the Executive Board of the Legislative Council and the following persons appointed by the Governor: A representative of the Nebraska Health and Human Services System; a representative of the courts; a representative of the Department of Correctional Services; a representative of the Nebraska Probation System; a representative of the Board of Parole; a representative of law enforcement; a representative of private providers of sex offender treatment; a representative of victim advocates; a licensed psychologist; a licensed alcohol and drug counselor; and a person required to be registered under the Sex Offender Registration Act who is participating in a sex offender treatment program. Other interested persons may be appointed in a nonvoting capacity as needed.

(2) The working group shall study sex offender treatment and management on the state level to determine future legislative and executive actions necessary to improve sex offender treatment and management within the State of Nebraska based upon the recommendations of the Governor's Working Group on the Management and Treatment of Sex Offenders report issued in August of 2001, with regard to the following:

(a) Credentialing of professionals who provide sex offender assessment or treatment, including psychologists, psychiatrists, licensed mental health professionals, licensed clinical social workers, and medical personnel;

(b) Creating mandated treatment standards for sex-offender-specific treatment as a component of a comprehensive approach to sex offender management; and

(c) Providing increased training opportunities for all professionals involved in the treatment and management of sex offenders.

(3) The Director of Regulation and Licensure, in consultation with the working group, shall submit a report of such study to the Legislature and the Governor on or before December 1, 2006. The working group terminates on December 1, 2006.

Source: Laws 2006, LB 1199, § 108.

Cross References

Sex Offender Registration Act, see section 29-4001.

ARTICLE 13
FUNERAL DIRECTORS, EMBALMING, AND CREMATION

(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.
71-1326. Repealed. Laws 2007, LB 463, § 1319.
71-1327. Transferred to section 38-1419.
71-1327.01. Transferred to section 38-1420.
71-1329. Repealed. Laws 2007, LB 463, § 1319.
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.
71-1339. Transferred to section 38-1425.
71-1340. Transferred to section 38-1426.
71-1341. Transferred to section 38-1427.
71-1345. Repealed. Laws 2007, LB 463, § 1319.
71-1346. Transferred to section 38-1428.
71-1354. Repealed. Laws 2007, LB 463, § 1319.

(b) CREMATION OF HUMAN REMAINS ACT

71-1356. Terms, defined.
71-1357. Crematory; license required.

Section
71-1361. Crematory; change in location, ownership, or name; application; requirements; fee.
71-1363. Licensure; fees.
71-1367. Deny or refuse to renew license; disciplinary action; grounds.
71-1368. Disciplinary actions; fine; disposition.
71-1373. Cremation; right to authorize.

(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.

71-1326 Repealed. Laws 2007, LB 463, § 1319.

71-1327 Transferred to section 38-1419.

71-1327.01 Transferred to section 38-1420.

71-1329 Repealed. Laws 2007, LB 463, § 1319.

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.

71-1339 Transferred to section 38-1425.

71-1340 Transferred to section 38-1426.

71-1341 Transferred to section 38-1427.

71-1345 Repealed. Laws 2007, LB 463, § 1319.

71-1346 Transferred to section 38-1428.

71-1354 Repealed. Laws 2007, LB 463, § 1319.

(b) CREMATION OF HUMAN REMAINS ACT

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 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; and

(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.

Source: Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186.

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.

71-1361 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.

71-1363 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.

71-1367 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.

71-1373 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 38-1425.

Source: Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190.

ARTICLE 14

MEDICALLY HANDICAPPED CHILDREN

Section
71-1405. Medically handicapped child; birth; duty of attendant to report.

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.

ARTICLE 15

HOUSING

(c) MODULAR HOUSING UNITS

Section
71-1557. Terms, defined.
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; Modular Housing Units Cash Fund; created; use; investment.
71-1563. Modular housing unit; violation; penalty.
71-1564. Commission; administer act; rules and regulations; powers; enumerated; charge for services.
71-1567. Seal; denied or suspended; hearing; appeal.

(c) MODULAR HOUSING UNITS

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.
Operative date April 1, 2008.

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. Operative date April 1, 2008.

71-1559 Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Modular Housing Units Cash Fund; created; use; investment.

(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 Modular Housing Units Cash Fund which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the act. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Modular Housing Units 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 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.
Operative date April 1, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

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. Operative date April 1, 2008.

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.
Operative date April 1, 2008.

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 the Administrative Procedure Act.

(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 the Administrative Procedure Act.

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.
Operative date April 1, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 16
LOCAL HEALTH SERVICES

(a) HEALTH DISTRICTS IN COUNTIES HAVING A POPULATION OF MORE THAN 200,000

(a) HEALTH DISTRICTS IN COUNTIES HAVING A POPULATION OF MORE THAN 200,000

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.

(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.

71-1628 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.

71-1628.04 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 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.

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 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.

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.

71-1630 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 report-

ing 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.

71-1631 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 three hundred thousand inhabitants, 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;

(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.

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.

ARTICLE 17
NURSES

(b) NURSE PRACTITIONER ACT

Section
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.
71-1709.01. Transferred to section 38-2307.
71-1709.02. Transferred to section 38-2309.
71-1710. Repealed. Laws 2007, LB 463, § 1319.
71-1712. Transferred to section 38-2311.
71-1714. Transferred to section 38-2313.
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.
71-1716.05. Transferred to section 38-2314.
71-1717. Transferred to section 38-2305.
71-1718.01. Transferred to section 71-17,134.
71-1718.02. Transferred to section 71-17,135.
71-1721. Transferred to section 38-2315.
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.

(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.
71-1734. 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.

Section
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.

(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.

71-1709.01 Transferred to section 38-2307.

71-1709.02 Transferred to section 38-2309.

71-1710 Repealed. Laws 2007, LB 463, § 1319.

71-1712 Transferred to section 38-2311.

71-1714 Transferred to section 38-2313.

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.

71-1716.05 Transferred to section 38-2314.

71-1717 Transferred to section 38-2305.

71-1718.01 Transferred to section 71-17,134.

71-1718.02 Transferred to section 71-17,135.

71-1721 Transferred to section 38-2315.

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.

(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.

71-1734 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.

71-1743 Transferred to section 38-605.

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.

71-1761 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.

(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.

71-1787 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.

(h) NEBRASKA CENTER FOR NURSING ACT

71-1796 Act, how cited.

Sections 71-1796 to 71-17,100 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.
Termination date July 1, 2010.

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.
Termination date July 1, 2010.

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. Termination date July 1, 2010.

71-17,100 Act; termination.

The Nebraska Center for Nursing Act terminates on July 1, 2010.

Source: Laws 2000, LB 1025, § 5; Laws 2005, LB 243, § 4. Termination date July 1, 2010.

(i) NURSING STUDENT LOAN ACT

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.

(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. 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.

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
71-1802. 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.

71-1802 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.

ARTICLE 19

CARE OF CHILDREN

(a) FOSTER CARE LICENSURE

(b) CHILD CARE LICENSURE

(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) Department means the Division of Public Health of the Department of Health and Human Services;

(4) 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; and

(5) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe.

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. Operative date July 18, 2008.

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 foster family homes as defined in section 71-1902. 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 facilities and programs of licensed providers of foster care programs subject to this section or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation 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 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.

(b) CHILD CARE LICENSURE

71-1908 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.

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.
Operative date July 18, 2008.

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, except that for amendment of a family child care home I license, an inspection shall occur within sixty days. 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.

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.

71-1912 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 II, child care center, 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.

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.

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 Repealed. Laws 2006, LB 994, § 162.

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; or

(11) Failure to pay fees required under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505.

Cross References

Medication Aide Act, see section 71-6718.

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.

ARTICLE 20

HOSPITALS

(a) SURVEY AND CONSTRUCTION

(h) UNIFORM BILLING FORMS

(a) SURVEY AND CONSTRUCTION

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 construc-

tion 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.

71-2006 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.

71-2009 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.

71-2013 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.

(h) UNIFORM BILLING FORMS

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.

(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.

71-2086 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.

71-2096 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

71-20,103 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.

71-20,113 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.

ARTICLE 21
INFANTS

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, mental retardation, 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.

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.
71-2207. Maternal and child health funds; how used.
71-2208. Maternal and child health; reports by Department of Health and Human Services; to whom made.
71-2225. Terms, defined.

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.

71-2207 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.

71-2225 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.

ARTICLE 23

NEBRASKA PROSTITUTION INTERVENTION AND TREATMENT ACT

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.
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.

(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

(b) MAIL SERVICE PHARMACY LICENSURE ACT

Section
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

71-2411. Terms, defined.
71-2412. Institutional pharmacy; requirements; emergency boxes; use; conditions.

(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. Return of dispensed drugs and devices; conditions.

(f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2422. Act, how cited.
71-2423. Terms, defined.
71-2425. Cancer drug donation.
71-2426. Cancer drug; accepted or dispensed; conditions.
71-2427. Participant; duties; fee authorized.
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. Act, how cited.
71-2437. Terms, defined.
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. Act, how cited.
71-2445. Terms, defined.
71-2446. Automated machine prohibited.
71-2447. Hospital 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.

(b) MAIL SERVICE PHARMACY LICENSURE ACT

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.

(c) EMERGENCY BOX DRUG ACT

71-2411 Terms, defined.

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel shall mean any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, pharmacist, or physician's assistant;

(2) Department shall mean the Department of Health and Human Services;

(3) Drug shall mean 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 shall mean 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) Institution shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a mental health center, a nursing facility, and a skilled nursing facility, as such terms are defined in sections 71-420, 71-421, 71-423, 71-424, and 71-429;

(6) Institutional pharmacy shall mean the physical portion of an institution engaged in the compounding, dispensing, and labeling of drugs which is

operating pursuant to a pharmacy license issued by the department under the Health Care Facility Licensure Act;

(7) Multiple dose vial shall mean any bottle in which more than one dose of a liquid drug is stored or contained; and

(8) Supplying pharmacist shall mean the pharmacist in charge of an institutional pharmacy or a pharmacist who provides emergency box drugs to an institution pursuant to the Emergency Box Drug Act. Supplying pharmacist shall not include any agent or employee of the supplying pharmacist who is not a pharmacist.

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.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2412 Institutional pharmacy; requirements; emergency boxes; use; conditions.

(1) Each institutional pharmacy shall be directed by a pharmacist, referred to as the pharmacist in charge as defined in section 38-2833, who is licensed to engage in the practice of pharmacy in this state.

(2) For an institution that does not have an institutional pharmacy or during such times as an institutional pharmacy may be unattended by a pharmacist, drugs may be administered to residents of the institution by authorized personnel of the institution from the contents of emergency boxes located within such facility if such drugs and boxes meet all of the following requirements:

(a) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacist with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(b) Emergency boxes shall be stored in a medication room or other secured area within the institution. Only the supplying pharmacist or authorized personnel of the institution 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;

(c) 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 pharmacist;

(d) The expiration date of an emergency box shall be the earliest date of expiration of any drug contained in the box;

(e) All emergency boxes shall be inspected by the supplying pharmacist or another pharmacist designated by the supplying pharmacist at least once every thirty days to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the institution for a period of two years;

(f) An emergency box shall not contain any multiple dose vials and shall not contain more than ten drugs which are controlled substances; and

(g) All drugs in emergency boxes shall be in the original manufacturer's containers or shall be repackaged by the supplying pharmacist and shall include the manufacturer'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 subdivision (7)(b) of section 38-2884.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195.

(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 Return of dispensed drugs and devices; conditions.

(1) To protect the public safety, dispensed drugs or devices may be returned to the dispensing pharmacy only under the following conditions:

(a) For immediate destruction by a pharmacist, except that drugs and devices dispensed to residents of a long-term care facility shall be destroyed on the site of the long-term care facility;

(b) In response to a recall by the manufacturer, packager, or distributor;

(c) If a device is defective or malfunctioning; or

(d) Return from a long-term care facility for credit, except that:

(i) No controlled substance may be returned;

(ii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iii) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(iv) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the pharmacy. Such container shall bear the expiration date or calculated expiration date and lot number; and

(v) Tablets or capsules shall have been dispensed in a unit dose with a tamper-evident container which is impermeable to moisture and approved by the Board of Pharmacy.

(2) Returned dispensed drugs or devices shall not be retained in inventory nor made available for subsequent dispensing, except as provided in subdivision (1)(d) of this section.

(3) For purposes of this section:

(a) Calculated expiration date means an expiration date on the prepackaged product which is not greater than twenty-five percent of the time between the

date of repackaging and the expiration date of the bulk container nor greater than six months from the date of repackaging;

(b) Dispense, drugs, and devices are defined in the Pharmacy Practice Act; and

(c) Long-term care facility does not include an assisted-living facility as defined in section 71-406.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199.

Cross References

Pharmacy Practice Act, see section 38-2801.

(f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2422 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.

71-2425 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 described in section 71-2401 or 71-2402, or (c) such drug has expired while in the repository.

(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.

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 described in section 71-2401 or 71-2402. 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.

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 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 or (b) such drug is adulterated or misbranded as described in section 71-2401 or 71-2402.

(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.

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 described in section 71-2401 or 71-2402 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.

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 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 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.
Operative date April 22, 2008.

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 before December 1, 2008, under the Uniform Licensing Law and on or after December 1, 2008, 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 or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(6) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(7) 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;

(8) 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 or pharmacy licensed under the Health Care Facility Licensure Act;

(9) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(10) 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;

(11) 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

(12) 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.
Operative date April 22, 2008.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.
Uniform Licensing Law, see section 71-101.

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 is prohibited.

Source: Laws 2008, LB308, § 3.
Operative date April 22, 2008.

71-2447 Hospital or pharmacy; use of automated medication system; policies and procedures required.

Any hospital 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 or pharmacy. At a minimum, the policies and procedures shall address the following:

(1) The description and location within the hospital or pharmacy of the automated medication system or equipment being used;

(2) The name of the individual or individuals 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 how and by whom the automated medication system is being utilized, including processes for filling, verifying, dispensing, and distributing medications;

(6) Staff education and training;

(7) Quality assurance and quality improvement programs and processes;

(8) Inoperability or emergency downtime procedures;

(9) Periodic system maintenance; and

(10) Medication security and controls.

Source: Laws 2008, LB308, § 4.
Operative date April 22, 2008.

71-2448 Prescription medication distribution machine; requirements; location.

A prescription medication distribution machine:

(1) Is subject to the requirements of section 71-2447; and

(2) May be operated only in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription.

Source: Laws 2008, LB308, § 5.
Operative date April 22, 2008.

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

(b) May be operated in a hospital for medication administration pursuant to a chart order 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.
Operative date April 22, 2008.

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 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 before December 1, 2008, in section 71-1,147.35 and on or after December 1, 2008, in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital or pharmacy where the patient is located.

Source: Laws 2008, LB308, § 7.
Operative date April 22, 2008.

71-2451 Pharmacist; practice of telepharmacy.

Unless specifically limited by the Board of Pharmacy or the Department of Health and Human Services, a pharmacist may engage in the practice of telepharmacy.

Source: Laws 2008, LB308, § 9.
Operative date April 22, 2008.

Note: This section was repealed by Laws 2008, LB308, section 17, operative on December 1, 2008.

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, the Uniform Licensing Law, or the Uniform Credentialing Act.

Source: Laws 2008, LB308, § 8.
Operative date April 22, 2008.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.
Uniform Licensing Law, see section 71-101.

ARTICLE 25

POISONS

(a) GENERAL PROVISIONS

Section
71-2503. Poisons; sale; duty of vendor to record in Poison Register.
71-2505. Poisons; sale; restrictions not applicable to physicians.
71-2506. Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.
71-2509. Poisons; restriction to sale upon prescription; power of Department of Health and Human Services.
71-2510. Poisons; sale upon prescription only; exceptions.
71-2511. Poisons; sale; violations; penalty.

(a) GENERAL PROVISIONS

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.

71-2505 Poisons; sale; restrictions not applicable to physicians.

The provisions of sections 71-2503 and 71-2504 shall not apply to the dispensing of poisons or preparation of medicines by those 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.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-629; Laws 2007, LB463, § 1203.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2506 Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.

Whenever, in the judgment of the Department of Health and Human Services, it shall become 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. Whenever the department shall propose to bring any additional poisons under such section, 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 shall determine to be reasonably calculated to notify the various interested parties. The department shall have the power to adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary. 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.

Cross References

Administrative Procedure Act, see section 84-920.

71-2509 Poisons; restriction to sale upon prescription; power of Department of Health and Human Services.

The Department of Health and Human Services may, by regulation, whenever such action becomes necessary for the protection of the public, prohibit the sale of any poison, subject to the provisions of this section, except upon the original written order or prescription of those 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 is empowered to adopt rules and regulations, not inconsistent with sections 71-2501 to 71-2511, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike, and it shall be the duty of the department, upon request, to furnish any person, authorized by sections 71-2501 to 71-2511 to sell or dispense any poisons, with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by such sections.

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.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2510 Poisons; sale upon prescription only; exceptions.

The provisions of sections 71-2502 to 71-2511 shall not apply to sales of poisons made to those 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 the provisions of 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.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2511 Poisons; sale; violations; penalty.

Any person, partnership, limited liability company, association, or corporation violating any of the provisions of sections 71-2502 to 71-2511 or any of the rules or regulations adopted and promulgated by the Department of Health and

Human Services pursuant to sections 71-2502 to 71-2511 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1941, c. 141, § 14, p. 566; C.S.Supp.,1941, § 81-993; R.S.1943, § 81-635; Laws 1977, LB 39, § 166; Laws 1993, LB 121, § 431; Laws 1996, LB 1044, § 629; Laws 2007, LB296, § 548.

ARTICLE 26

STATE BOARD OF HEALTH

Section

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.

71-2617 Health and Human Services Reimbursement Fund; created; purpose.

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.

71-2619 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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

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.

ARTICLE 28

PHYSICAL THERAPY

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.
71-2807. 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.
71-2814. 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.
71-2819. 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.

71-2807 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.

71-2814 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.

71-2819 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 31
RECREATION CAMPS

Section
71-3101. Terms, defined.
71-3102. Permit; application; issuance; fees; disposition.
71-3104. Permit; revocation; grounds.

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.

71-3104 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.

ARTICLE 33

FLUORIDATION

Section
71-3305. Political subdivision; fluoride added to water supply; exception.
71-3306. Other entity; fluoride added to water supply; rules and regulations.

71-3305 Political subdivision; fluoride added to water supply; exception.

(1) Except as otherwise provided in subsection (2) of this section, any city or village having a population of one thousand or more inhabitants shall, no later than June 1, 2010, 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) In any city or village which is required to add fluoride to its water supply under subsection (1) of this section and in which fluoride is not added to such water supply as of January 1, 2008, the voters of the city or village may adopt an ordinance, after April 18, 2008, but before June 1, 2010, 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.

(3) 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.
Effective date April 18, 2008.

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

(b) CHILD DEATHS

(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.

(b) CHILD DEATHS

71-3406 State Child 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 eight and a maximum of twelve members to the State Child 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, and (e) 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.

(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.

Cross References

Open Meetings Act, see section 84-1407.

71-3410 Provision of information and records; subpoenas.

Upon request the team shall be immediately provided:

(1) 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

(2) All information and records maintained by any state, county, or local government agency, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, parole and probation information and records, and information and records of any social services agency that provided services to the child or the child's family.

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) and (2) of this section, except records and information on any child 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.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

Cross References

Medical Radiography Practice Act, see section 38-1901.
Radon, credentialing provisions, see sections 38-1,119 to 38-1,123.
Uniform Credentialing Act, see section 38-101.

(a) RADIATION CONTROL ACT

Section

Section

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

(d) RADIOLOGICAL INSTRUMENTS

(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; and

(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;

(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. Operative date December 1, 2008.

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.

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:

(1) 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 (a) for registration or licensure under section 71-3507 or 71-3509, (b) for registration or licensure of (i) any other source of radiation, (ii) persons providing services for collection, detection, measurement, or monitoring of sources of radiation, including, but not limited to, radon and its decay products, (iii) persons providing services to reduce the effects of sources of radiation, and (iv) persons practicing industrial radiography, and (c) 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;

(2) 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;

(3) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation;

(4) Collect and disseminate health education information relating to radiation protection;

(5) 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;

(6) 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

(7) 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 fifty-three thousand dollars per annum. Commencing July 1, 1997, 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 direct 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.

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.
Operative date December 1, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

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 requirements 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. Operative date December 1, 2008.

Cross References

Uniform Credentialing Act, see section 38-101.

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. Operative date December 1, 2008.

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.

71-3512 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 Fingerprinting and federal criminal background check; rules and regulations; department; duties.

The department shall adopt and promulgate rules and regulations providing 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.

This section terminates on December 1, 2008.

Source: Laws 2008, LB928, § 25.
Operative date April 22, 2008.
Termination date December 1, 2008.

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 depart-

ment 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.
Operative date December 1, 2008.

Cross References

Administrative Procedure Act, see section 84-920.
Uniform Credentialing Act, see section 38-101.

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.
Operative date April 22, 2008.

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

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.

71-3526 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.

(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 such fees and the department shall assess such fees on all radiological instruments 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 shall be paid in advance of calibration. Fees shall be remitted to the State Treasurer for credit to the Nebraska Emergency Management Agency Cash Fund.

Source: Laws 2006, LB 787, § 3.

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 calibrated radiological instrument has not been receipted from the department by the responsible agency sixty days after the completed calibration date, the department shall provide written notification to the responsible agency that failure to receipt such instrument within ninety days after the completed calibration 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 completed calibration 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.

71-3535 Applicability of sections.

Sections 71-3529 to 71-3536 shall not apply to a radiological instrument owned and repaired, calibrated, or replaced by the department, except when a responsible agency has been issued a radiological instrument and, by agree-

ment, has consented to be responsible for the replacement, repair, and calibration of such instrument.

Source: Laws 2006, LB 787, § 7.

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.

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) 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 tuberculosis persons;

(4) 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;

(5) 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

(6) 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.

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 Rules, regulations, orders; violation; procedure.

When a person with communicable tuberculosis violates the rules, regulations, or orders adopted and promulgated by the department and is thereby conducting himself or herself in such a way as to expose others to danger of infection, after having been ordered by the state health officer or a local health officer to comply, the state health officer or 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.

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.

71-3608 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 patient care; transportation; payment.

(1) When any person who has communicable or contagious 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 or contagious tuberculosis in a health care facility on either an inpatient or an outpatient basis, or otherwise, 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. 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, and (e) 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.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 37
ENVIRONMENTAL HEALTH SPECIALISTS

Section
71-3702. Transferred to section 38-1302.
71-3703. Transferred to section 38-1308.
71-3704. Transferred to section 38-1309.

Section
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.

71-3702 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 43
SWIMMING POOLS

Section
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 act; effect.

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 act; 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.

ARTICLE 44

RABIES

Section
71-4401. Terms, defined.
71-4402. Vaccination against rabies; required; vaccine; sales.
71-4402.02. Hybrid animal; vaccination against rabies; required; vaccine; sales.
71-4402.03. Control and prevention of rabies; rules and regulations.

Section
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.
71-4412. 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.

71-4402.02 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.

71-4412 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 46

MANUFACTURED HOMES, RECREATIONAL VEHICLES, AND MOBILE HOME PARKS

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

(b) MOBILE HOME PARKS

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

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 Chapter 60, article 14, 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 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 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 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.
Operative date April 1, 2008.

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.
Operative date April 1, 2008.

71-4604.01 Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Manufactured Homes and Recreational Vehicles Cash Fund; created; investment.

(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 of not less than ten dollars and not more than seventy-five dollars, as 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 requesting 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) Typicals, 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 Manufactured Homes and Recreational Vehicles Cash Fund which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the code. Any money in the Manufactured Homes and Recreational Vehicles 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 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.
Operative date April 1, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

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 manufac-

tured-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. Operative date April 1, 2008.

(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.

71-4623 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.
Operative date April 1, 2008.

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.

71-4628 Repealed. Laws 2008, LB 797, § 34.

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.
Operative date April 1, 2008.

Cross References

Administrative Procedure Act, see section 84-920.

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

(a) HEARING AIDS

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

(c) INFANT HEARING ACT

(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.

71-4706 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.

71-4714 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.

71-4719 Repealed. Laws 2007, LB 463, § 1319.

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

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 under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters. The roster shall include the type of employment the interpreter generally engages in, the type of license the interpreter holds, 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;

(3) Promote the training of interpreters 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;

(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 interpreter services;

(15) Make recommendations to the State Department of Education, public school districts, and educational service units regarding policies and procedures for qualified educational interpreter guidelines and a training program as required in subsection (3) of section 20-150, including, but not limited to, testing, training, and grievances; and

(16) 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.

Cross References

Telecommunications Relay System Act, see section 86-301.

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.

(c) INFANT HEARING ACT

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 annually report to the Legislature 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.

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

(a) UNIFORM ANATOMICAL GIFT ACT

(b) MISCELLANEOUS PROVISIONS

(c) BONE MARROW DONATIONS

(d) DONOR REGISTRY OF NEBRASKA

(a) UNIFORM ANATOMICAL GIFT ACT

71-4807 Rights and duties at death.

(1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he or she may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at his or her death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part, except the enucleation of eyes. 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, College of Medicine of the University of Nebraska, may enucleate the eyes of the donor.

(3) A person who acts in good faith in accord with the terms of the Uniform Anatomical Gift Act or under the anatomical gift laws of another state shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

(4) The Uniform Anatomical Gift Act shall be subject to the laws of this state prescribing powers and duties with respect to autopsies.

Source: Laws 1971, LB 799, § 7; Laws 1976, LB 764, § 3; Laws 1986, LB 1228, § 1; Laws 1993, LB 187, § 36; Laws 2007, LB463, § 1218.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-4810 Legal liability; exemption; exceptions.

No physician, surgeon, hospital, blood bank, tissue bank, funeral director and embalmer licensed under the Funeral Directing and Embalming Practice Act, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one or more human beings, living or dead, to another human being, shall be liable in damages as a result of any such activity, save and except that each such person or entity shall remain liable in damages for his, her, or its own negligence or willful misconduct.

Source: Laws 1971, LB 799, § 10; Laws 1976, LB 764, § 4; Laws 1993, LB 187, § 37; Laws 2007, LB463, § 1219.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

(b) MISCELLANEOUS PROVISIONS

71-4813 Eye tissue; pituitary gland; removal; when authorized.

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 section 71-4807, 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:

(1) Autopsy was authorized by the county coroner;

(2) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 38-1425; and

(3) 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.

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.

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.

(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.

(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.

(d) DONOR REGISTRY OF NEBRASKA

71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.

(1) The federally designated organ procurement organization in 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. Transplant facilities may obtain needed information from such organization for placement of organs and tissue. Federally designated organ procurement agen-

cies and cadaveric tissue agencies in other states may obtain information from such organization 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 in 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 registry.

(2) It is the intent of the Legislature that the registry facilitate organ and tissue donations and not inhibit such donations. A person does not need to be listed on the registry to be an organ and tissue donor.

(3) No person shall obtain information from the registry for the purpose of fundraising or other commercial use. Information obtained from the registry 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 in Nebraska.

Source: Laws 2004, LB 559, § 7.

71-4823 Donor Registry of Nebraska Advisory Board; created; members; duties.

(1) The Donor Registry of Nebraska Advisory Board is created. The advisory board shall consist of:

(a) A member of the board of directors of the federally designated organ procurement organization in Nebraska who shall serve as the chairperson of the advisory board;

(b) A representative of the Nebraska Organ and Tissue Donor Coalition appointed by the board of directors of the coalition;

(c) A representative of the Lion's Eye Bank of Nebraska appointed by the board of directors of such organization;

(d) A representative of each transplant hospital in Nebraska appointed by the chief executive officer of such hospital;

(e) A representative of a Nebraska community hospital in Nebraska appointed by the Nebraska Hospital Association;

(f) A representative of the National Kidney Foundation of Nebraska appointed by the board of directors of such organization;

(g) A representative of the American Lung Association of Nebraska appointed by the board of directors of such organization;

(h) A representative of the Nebraska chapter of the American Heart Association appointed by the board of directors of such organization; and

(i) A representative of the Department of Motor Vehicles appointed by the Director of Motor Vehicles.

(2) The federally designated organ procurement organization in Nebraska shall provide administrative support for the advisory board.

(3) The advisory board shall advise and assist the federally designated organ procurement organization in Nebraska on matters relating to the Donor Registry of Nebraska, including, but not limited to, (a) evaluation of the donor registry system, (b) consideration of processes and procedures to increase public awareness and use of the registry, and (c) the development of protocols

to ensure the security and integrity of the registry and the confidentiality of donors listed on the registry.

Source: Laws 2004, LB 559, § 8.

ARTICLE 50

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

(a) COMMUNITY MENTAL HEALTH SERVICES

Section

71-5001. Repealed. Laws 2004, LB 1083, § 149.
71-5002. Repealed. Laws 2004, LB 1083, § 149.
71-5003. Repealed. Laws 2004, LB 1083, § 149.
71-5003.01. Repealed. Laws 2004, LB 1083, § 149.
71-5004. Repealed. Laws 2004, LB 1083, § 149.
71-5005. Repealed. Laws 2004, LB 1083, § 149.
71-5006. Repealed. Laws 2004, LB 1083, § 149.
71-5007. Repealed. Laws 2004, LB 1083, § 149.
71-5008. Repealed. Laws 2004, LB 1083, § 149.
71-5009. Repealed. Laws 2004, LB 1083, § 149.
71-5009.01. Repealed. Laws 2004, LB 1083, § 149.
71-5010. Repealed. Laws 2004, LB 1083, § 149.
71-5012. Repealed. Laws 2004, LB 1083, § 149.
71-5013. Repealed. Laws 2004, LB 1083, § 149.
71-5014. Repealed. Laws 2004, LB 1083, § 149.
71-5015. Repealed. Laws 2004, LB 1083, § 149.

(b) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES

71-5016. Repealed. Laws 2004, LB 1083, § 149.
71-5017. Repealed. Laws 2004, LB 1083, § 149.
71-5018. Repealed. Laws 2004, LB 1083, § 149.
71-5019. Repealed. Laws 2004, LB 1083, § 149.
71-5020. Repealed. Laws 2004, LB 1083, § 149.
71-5021. Repealed. Laws 2004, LB 1083, § 149.
71-5022. Repealed. Laws 2004, LB 1083, § 149.
71-5023. Repealed. Laws 2004, LB 1083, § 149.
71-5024. Repealed. Laws 2004, LB 1083, § 149.
71-5025. Repealed. Laws 2004, LB 1083, § 149.
71-5026. Repealed. Laws 2004, LB 1083, § 149.
71-5027. Repealed. Laws 2004, LB 1083, § 149.
71-5028. Repealed. Laws 2004, LB 1083, § 149.
71-5029. Repealed. Laws 2004, LB 1083, § 149.
71-5030. Repealed. Laws 2004, LB 1083, § 149.
71-5031. Repealed. Laws 2004, LB 1083, § 149.
71-5032. Repealed. Laws 2004, LB 1083, § 149.
71-5033. Repealed. Laws 2004, LB 1083, § 149.
71-5034. Repealed. Laws 2004, LB 1083, § 149.
71-5035. Repealed. Laws 2004, LB 1083, § 149.
71-5036. Repealed. Laws 2004, LB 1083, § 149.
71-5037. Repealed. Laws 2004, LB 1083, § 149.
71-5038. Repealed. Laws 2004, LB 1083, § 149.
71-5039. Repealed. Laws 2004, LB 1083, § 149.
71-5040. Repealed. Laws 2004, LB 1083, § 149.

(c) MINORS; ALCOHOL OR DRUG ABUSE COUNSELING OR TREATMENT

71-5041. Repealed. Laws 2004, LB 1083, § 149.

(d) REHABILITATION AND SUPPORT MENTAL HEALTH SERVICES INCENTIVE ACT

71-5042. Repealed. Laws 2004, LB 1083, § 149.
71-5043. Repealed. Laws 2004, LB 1083, § 149.
71-5044. Repealed. Laws 2004, LB 1083, § 149.

Section
71-5045. Repealed. Laws 2004, LB 1083, § 149.
71-5046. Repealed. Laws 2004, LB 1083, § 149.
71-5047. Repealed. Laws 2004, LB 1083, § 149.
71-5048. Repealed. Laws 2004, LB 1083, § 149.
71-5049. Repealed. Laws 2004, LB 1083, § 149.
71-5050. Repealed. Laws 2004, LB 1083, § 149.
71-5051. Repealed. Laws 2004, LB 1083, § 149.
71-5052. Repealed. Laws 2004, LB 1083, § 149.

(e) BEHAVIORAL HEALTH COMMUNITY-BASED SERVICES

71-5053. Repealed. Laws 2004, LB 1083, § 149.
71-5055. Repealed. Laws 2004, LB 1083, § 149.
71-5056. Repealed. Laws 2004, LB 1083, § 149.
71-5057. Repealed. Laws 2004, LB 1083, § 149.

(f) NEBRASKA BEHAVIORAL HEALTH REFORM ACT

71-5058. Repealed. Laws 2004, LB 1083, § 149.
71-5059. Repealed. Laws 2004, LB 1083, § 149.
71-5060. Repealed. Laws 2004, LB 1083, § 149.
71-5061. Repealed. Laws 2004, LB 1083, § 149.
71-5062. Repealed. Laws 2004, LB 1083, § 149.
71-5063. Repealed. Laws 2004, LB 1083, § 149.
71-5064. Repealed. Laws 2004, LB 1083, § 149.
71-5065. Repealed. Laws 2004, LB 1083, § 149.
71-5066. Repealed. Laws 2004, LB 1083, § 149.

(a) COMMUNITY MENTAL HEALTH SERVICES

71-5001 Repealed. Laws 2004, LB 1083, § 149.

71-5002 Repealed. Laws 2004, LB 1083, § 149.

71-5003 Repealed. Laws 2004, LB 1083, § 149.

71-5003.01 Repealed. Laws 2004, LB 1083, § 149.

71-5004 Repealed. Laws 2004, LB 1083, § 149.

71-5005 Repealed. Laws 2004, LB 1083, § 149.

71-5006 Repealed. Laws 2004, LB 1083, § 149.

71-5007 Repealed. Laws 2004, LB 1083, § 149.

71-5008 Repealed. Laws 2004, LB 1083, § 149.

71-5009 Repealed. Laws 2004, LB 1083, § 149.

71-5009.01 Repealed. Laws 2004, LB 1083, § 149.

71-5010 Repealed. Laws 2004, LB 1083, § 149.

71-5012 Repealed. Laws 2004, LB 1083, § 149.

71-5013 Repealed. Laws 2004, LB 1083, § 149.

71-5014 Repealed. Laws 2004, LB 1083, § 149.

71-5015 Repealed. Laws 2004, LB 1083, § 149.

(b) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES

71-5016 Repealed. Laws 2004, LB 1083, § 149.

71-5017 Repealed. Laws 2004, LB 1083, § 149.

71-5018 Repealed. Laws 2004, LB 1083, § 149.

71-5019 Repealed. Laws 2004, LB 1083, § 149.

71-5020 Repealed. Laws 2004, LB 1083, § 149.

71-5021 Repealed. Laws 2004, LB 1083, § 149.

71-5022 Repealed. Laws 2004, LB 1083, § 149.

71-5023 Repealed. Laws 2004, LB 1083, § 149.

71-5024 Repealed. Laws 2004, LB 1083, § 149.

71-5025 Repealed. Laws 2004, LB 1083, § 149.

71-5026 Repealed. Laws 2004, LB 1083, § 149.

71-5027 Repealed. Laws 2004, LB 1083, § 149.

71-5028 Repealed. Laws 2004, LB 1083, § 149.

71-5029 Repealed. Laws 2004, LB 1083, § 149.

71-5030 Repealed. Laws 2004, LB 1083, § 149.

71-5031 Repealed. Laws 2004, LB 1083, § 149.

71-5032 Repealed. Laws 2004, LB 1083, § 149.

71-5033 Repealed. Laws 2004, LB 1083, § 149.

71-5034 Repealed. Laws 2004, LB 1083, § 149.

71-5035 Repealed. Laws 2004, LB 1083, § 149.

71-5036 Repealed. Laws 2004, LB 1083, § 149.

71-5037 Repealed. Laws 2004, LB 1083, § 149.

71-5038 Repealed. Laws 2004, LB 1083, § 149.

71-5039 Repealed. Laws 2004, LB 1083, § 149.

71-5040 Repealed. Laws 2004, LB 1083, § 149.

(c) MINORS; ALCOHOL OR DRUG ABUSE COUNSELING OR TREATMENT

71-5041 Repealed. Laws 2004, LB 1083, § 149.

(d) REHABILITATION AND SUPPORT MENTAL HEALTH SERVICES INCENTIVE ACT

71-5042 Repealed. Laws 2004, LB 1083, § 149.

71-5043 Repealed. Laws 2004, LB 1083, § 149.

71-5044 Repealed. Laws 2004, LB 1083, § 149.

71-5045 Repealed. Laws 2004, LB 1083, § 149.

71-5046 Repealed. Laws 2004, LB 1083, § 149.

71-5047 Repealed. Laws 2004, LB 1083, § 149.

71-5048 Repealed. Laws 2004, LB 1083, § 149.

71-5049 Repealed. Laws 2004, LB 1083, § 149.

71-5050 Repealed. Laws 2004, LB 1083, § 149.

71-5051 Repealed. Laws 2004, LB 1083, § 149.

71-5052 Repealed. Laws 2004, LB 1083, § 149.

(e) BEHAVIORAL HEALTH COMMUNITY-BASED SERVICES

71-5053 Repealed. Laws 2004, LB 1083, § 149.

71-5055 Repealed. Laws 2004, LB 1083, § 149.

71-5056 Repealed. Laws 2004, LB 1083, § 149.

71-5057 Repealed. Laws 2004, LB 1083, § 149.

(f) NEBRASKA BEHAVIORAL HEALTH REFORM ACT

71-5058 Repealed. Laws 2004, LB 1083, § 149.

71-5059 Repealed. Laws 2004, LB 1083, § 149.

71-5060 Repealed. Laws 2004, LB 1083, § 149.

71-5061 Repealed. Laws 2004, LB 1083, § 149.

71-5062 Repealed. Laws 2004, LB 1083, § 149.

71-5063 Repealed. Laws 2004, LB 1083, § 149.

71-5064 Repealed. Laws 2004, LB 1083, § 149.

71-5065 Repealed. Laws 2004, LB 1083, § 149.

71-5066 Repealed. Laws 2004, LB 1083, § 149.

ARTICLE 51
EMERGENCY MEDICAL SERVICES

(c) EMERGENCY MEDICAL SERVICES ACT

Section
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.

(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.

(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.

(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. The Department of Health and Human Services shall annually, on or before January 1, submit a report to the Legislature which includes a general accounting of the income and expenditures of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2001, LB 191, § 2; Laws 2007, LB296, § 606; Laws 2007, LB463 § 1222.

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

(a) FAMILY PRACTICE RESIDENCY

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.

ARTICLE 53

DRINKING WATER

Cross References

Credentialing provisions, see sections 38-1,119 to 38-1,123.

(a) NEBRASKA SAFE DRINKING WATER ACT

(b) DRINKING WATER STATE REVOLVING FUND ACT

(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 distribution 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 (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead, (b) when used with respect to pipes and pipe fittings means pipes and pipe fittings containing not more than eight percent lead, and (c) when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion means fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) as such section existed on July 16, 2004;

(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;

(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; and

(16) Small system means a public water system that regularly serves less than ten thousand individuals.

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.

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 adminis-

trative 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.

71-5304.01 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 small system 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.

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.

71-5305.01 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 authority; 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) Certify laboratories performing tests on water that is intended for human consumption. The director may establish, through rules and regulations, standards for certification. Such standards may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results. Such standards shall be consistent with requirements for performing laboratory tests established by the federal 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;

(d) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(e) 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;

(f) 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;

(g) 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

(h) 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) All such fees collected by the department 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.
Operative date July 18, 2008.

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.

(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.

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.

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.

71-5311.02 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.

71-5312.01 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

71-5318 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.

71-5322 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;

(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 operated by political subdivisions with populations of ten thousand inhabitants or less which 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 operated by political subdivisions with populations of ten thousand inhabitants or less which 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.

ARTICLE 54

DRUG PRODUCT SELECTION

Section
71-5402. Terms, defined.
71-5403. Drug product selection; when.
71-5404. Pharmacist; drug product selection; effect on reimbursement; label; price.

71-5402 Terms, defined.

For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that

are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(2) Board means the Board of Pharmacy;

(3) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

(4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(5) Department means the Department of Health and Human Services;

(6) Drug product means any drug or device as defined in section 38-2841;

(7) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(8) Equivalent means drug products that are both chemically equivalent and bioequivalent;

(9) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity;

(10) Medical order has the definition found in section 38-2828;

(11) Pharmacist means a pharmacist licensed under the Pharmacy Practice Act; and

(12) Practitioner has the definition found in section 38-2838.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232.

Cross References

Pharmacy Practice Act, see section 38-2801.

71-5403 Drug product selection; when.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying on the face of the prescription or by telephonic, facsimile, or electronic transmission that there shall be no drug product selection. For written prescriptions, the practitioner shall specify in his or her own handwriting on the prescription the phrase ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', or ''no generic substitution'' or the notation ''N.D.P.S.'', ''D.A.W.'', or ''B.M.N.'' or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note ''N.D.P.S.'', ''D.A.W.'', ''B.M.N.'', ''no drug product selection'', ''dis-

pense as written'', ''brand medically necessary'', ''no generic substitution'', or words or notations of similar import on the face of the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54.

71-5404 Pharmacist; drug product selection; effect on reimbursement; label; price.

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import on the prescription or so designates orally or in writing which may be transmitted by facsimile or electronic transmission.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Source: Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13.

ARTICLE 56

RURAL HEALTH

(c) OFFICE OF RURAL HEALTH

Section
71-5647. Office of Rural Health; created; powers and duties.

(c) OFFICE OF RURAL HEALTH

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.

71-5649 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

71-5651 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, and (3) 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.

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) Qualified educational debts means government and commercial 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 or the Nebraska Medical Student Assistance Act; and

(12) 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.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

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.

71-5661 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 and (b) the repayment of qualified educational debts owed by eligible health professionals as determined pursuant to such section. 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. Money credited pursuant to section 71-5670.01 and payments received pursuant to sections 71-5666 and 71-5668 shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 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.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-5662 Student loan; 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 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 before December 1, 2008, under the requirements of the Uniform Licensing Law or on or after December 1, 2008, 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.
Operative date July 18, 2008.

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 twenty thousand dollars for each recipient for each academic year and shall not exceed eighty thousand dollars per medical, dental, or doctorate-level mental health student or twenty thousand dollars per master's level mental health or physician assistant student.

(2) 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 twenty thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed sixty thousand dollars per recipient and (b) for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners shall be limited to ten thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed thirty 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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

71-5666 Student loan recipient agreement; contents.

Each student loan recipient shall execute an agreement with the state. Such agreement 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 the three-month restriction 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;

(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, 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) In the event of a borrower's total and permanent disability or death, the unpaid debt accrued under the Rural Health Systems and Professional Incentive Act shall be canceled.

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.

71-5667 Agreements under prior law; renegotiation.

Loan agreements executed prior to July 1, 2007, under the Nebraska Medical Student Assistance Act or 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.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2.

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 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 twenty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to ten 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; and

(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 twenty-five percent of the total amount of funds provided to the recipient for loan repayment. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds.

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.
Operative date July 18, 2008.

(f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT

71-5680 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.

ARTICLE 57
SMOKING AND TOBACCO

(a) CLEAN INDOOR AIR

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

(d) NEBRASKA CLEAN INDOOR AIR ACT

(a) CLEAN INDOOR AIR

71-5701 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5702 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5703 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5704 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5705 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5706 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5707 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5708 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5709 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5710 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5711 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5712 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

71-5713 Repealed. Laws 2008, LB 395, § 22.
(Operative date June 1, 2009.)

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

71-5714 Tobacco Prevention and Control Cash Fund; created; use; investment.

The Tobacco Prevention and Control Cash Fund is created. The fund shall be used for a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services which 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. Any money in the Tobacco Prevention and Control 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 2000, LB 1436, § 3; Laws 2002, LB 1310, § 8; Laws 2003, LB 412, § 3; Laws 2005, LB 301, § 56; Laws 2007, LB296, § 633.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5716 Act, how cited.

Sections 71-5716 to 71-5734 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

Source: Laws 2008, LB395, § 1.
Operative date June 1, 2009.

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. 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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

71-5719 Employed, defined.

Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Source: Laws 2008, LB395, § 4.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

71-5730 Exemptions.

The following indoor areas are exempt from section 71-5729:

(1) Guestrooms and suites that are rented to guests and 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;

(2) 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; and

(3) Tobacco retail outlets.

Source: Laws 2008, LB395, § 15.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

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.
Operative date June 1, 2009.

ARTICLE 58
HEALTH CARE; CERTIFICATE OF NEED

Section

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.

71-5829.03 Certificate of need; activities requiring.

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 (6) and (7) 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) A relocation of long-term care beds from a health care facility at one physical facility or contiguous site to another noncontiguous site within the same health planning region if the relocation will cause an aggregate increase in long-term care beds between those locations of more than ten beds or more than ten percent of the total bed capacity, whichever is less, over a two-year period;

(5) Any relocation of long-term care beds from a health care facility located in one health planning region to a health care facility in a different health planning region;

(6) 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;

(7) 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

(8) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility.

Source: Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1.
Effective date July 18, 2008.

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.
Effective date July 18, 2008.

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; and

(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.

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. Operative date April 22, 2008.

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.

ARTICLE 59

ASSISTED-LIVING FACILITY ACT

Section
71-5901. Act, how cited.
71-5902. Purposes of act.
71-5903. Terms, defined.
71-5904. Admission requirements.
71-5905. Admission or retention; conditions; health maintenance activities; requirements.
71-5906. Drugs, devices, biologicals, and supplements; list required; duties.
71-5907. Life Safety Code classification.
71-5908. Rules and regulations.

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 regula-

tion of assisted-living facilities and to provide for the health and safety of residents of such facilities.

Source: Laws 2004, LB 1005, § 46.

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 transfer, ambulation, exercise, toileting, eating, self-administration of medication, and similar activities;

(2) Administrator means the operating officer 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) Assisted-living facility has the same meaning as in section 71-406;

(4) Authorized representative means (a) a person holding a durable power of attorney for health care, (b) a guardian, or (c) a person appointed by a court to manage the personal affairs of a resident of an assisted-living facility other than the facility;

(5) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(6) 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. Complex nursing interventions does not include a nursing assessment;

(7) Department means the Department of Health and Human Services;

(8) 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;

(9) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(10) 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

(11) Stable or predictable means that a resident's clinical and behavioral status and nursing care needs are determined to be (a) nonfluctuating and consistent or (b) fluctuating in an expected manner with planned interventions, including an expected deteriorating condition.

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.

71-5904 Admission requirements.

Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings.

To be eligible for admission to an assisted-living facility, a person shall be in need of or wish to have available room, board, assistance with or provision of personal care, activities of daily living, or health maintenance activities or supervision due to age, illness, or physical disability. The administrator shall have the discretion regarding admission or retention of residents 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.

71-5905 Admission or retention; conditions; health maintenance activities; requirements.

(1) An assisted-living facility shall not admit or retain a resident who requires complex nursing interventions or whose condition is not stable or predictable unless:

(a) The resident, if he or she is not a minor and is competent to make a rational decision as to his or her needs or care, or his or her authorized representative, and his or her physician or a registered nurse agree that admission or retention of the resident is appropriate;

(b) The resident or his or her authorized representative agrees to arrange for the care of the resident through appropriate private duty personnel, a licensed home health agency, or a licensed hospice; and

(c) The resident's care does not compromise the facility operations or create a danger to others in the facility.

(2) Health maintenance activities at an assisted-living facility shall be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2004, LB 1005, § 49.

Cross References

Nurse Practice Act, see section 38-2201.

71-5906 Drugs, devices, biologicals, and supplements; list required; duties.

(1) On and after January 1, 2005, 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.

(2) Every person residing in an assisted-living facility on January 1, 2005, or the authorized representative of such person shall, within sixty days after January 1, 2005, and annually thereafter, 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.

(3) 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 (1) and (2) of this section.

(4) 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.

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.

ARTICLE 60

NURSING HOMES

(b) NEBRASKA NURSING HOME ACT

Section
71-6010. Department, defined.
71-6011. Repealed. Laws 2007, LB 296, § 815.

(b) NEBRASKA NURSING HOME ACT

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.

71-6014 Repealed. Laws 2004, LB 1005, § 145.

71-6015 Repealed. Laws 2004, LB 1005, § 145.

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.

71-6018.01 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 mental retardation. 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.

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.

71-6021 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.

(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) Nursing assistant means any person employed by a nursing home 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 nursing assistant 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.

71-6039 Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.

(1) No person shall act as a nursing assistant in a nursing home 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 nursing home residents; and

(c) Has successfully completed a basic course of training approved by the department for nursing assistants within one hundred twenty days of initial employment in the capacity of a nursing assistant at any nursing home.

(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 nursing assistant in a nursing home.

(b) If a person registered as a nursing assistant becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nursing assistant 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 nursing assistants 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 nursing assistant 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 nursing assistants at intermediate care facilities for the mentally retarded, 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 nursing assistants at all nursing homes other than intermediate care facilities for the mentally retarded, 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.

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 register 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.

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 register 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.

71-6039.06 Eligibility for Licensee Assistance Program.

Nursing assistants and paid dining assistants are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 2007, LB463, § 1240.

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 Terms, defined.

As used in sections 71-6043 to 71-6052, unless the context otherwise requires:

(1) Council means the Nursing Home Advisory Council as established by sections 71-6043 to 71-6052;

(2) Department means the Division of Public Health of the Department of Health and Human Services; and

(3) Nursing home means a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1967, c. 452, § 1, p. 1399; Laws 1982, LB 566, § 1; R.S.1943, (1986), § 71-2031; Laws 1996, LB 1044, § 752; Laws 1997, LB 307, § 193; Laws 2000, LB 819, § 129; Laws 2007, LB296, § 644.

71-6045 Council; members; qualifications.

The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a licensed pharmacist in the State of Nebraska;

(5) Three members shall be representatives of the Department of Health and Human Services with interest in or responsibilities for aging programs, medicaid, and regulation and licensure of nursing homes;

(6) One member shall be a representative of an agency of state or local government, other than the Department of Health and Human Services, with interests in or responsibilities for nursing homes or programs related thereto;

(7) Four members shall be laypersons representative of the public;

(8) Two members shall be administrators or owners of proprietary nursing homes; and

(9) Two members shall be administrators or owners of voluntary nursing homes.

Members serving on July 1, 2007, may serve until a replacement is appointed.

Source: Laws 1967, c. 452, § 3, p. 1400; Laws 1989, LB 344, § 17; R.S.Supp.,1989, § 71-2033; Laws 1996, LB 1044, § 753; Laws 2001, LB 398, § 80; Laws 2007, LB296, § 645.

71-6048 Council; meetings; chairperson; secretary.

The council shall meet at least once during each calendar year and upon call of its chairperson or at the written request of a majority of its members. The council shall annually elect one of its members as chairperson and one of its members as secretary. The Director of Public Health or his or her designee shall represent the department at all meetings.

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2036; Laws 1997, LB 307, § 194; Laws 2007, LB296, § 646.

(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

Section
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.
71-6117. 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.

71-6117 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

Section
71-6208. Director, defined.
71-6211. Health professional group not previously regulated, defined.
71-6218. Regulated health professions, defined.
71-6221. Regulation of health profession; change in scope of practice; when.
71-6224. Technical committee; appointment; membership; meetings; duties.

71-6208 Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652.

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 remunera-

tion, 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; or

(3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241.

Cross References

Uniform Credentialing Act, see section 38-101.

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; or

(3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6221 Regulation of health profession; change in scope of practice; when.

(1) After January 1, 1985, 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 and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Regulation of the 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, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(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 and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(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 effectively protected by other means in a more cost-effective manner.

(3) After March 18, 1988, the scope of practice of a regulated health profession shall be changed only when:

(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(c) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(4) The Division of Public Health 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.

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 two members 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. Each committee shall conduct public factfinding hearings and shall otherwise investigate the application. Each committee shall comply with the Open Meetings Act.

(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. 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. If a committee finds that all appropriate criteria are not met, it shall recommend denial of the application. If it finds that all appropriate criteria are met by the applica-

tion as submitted, it shall recommend approval. If the committee finds that the criteria would be met if amendments were made to the application, it may recommend such amendments to the applicant group and it may allow such amendments to be made before making its final recommendations. 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. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20.

Cross References

Open Meetings Act, see section 84-1407.

ARTICLE 63
ENVIRONMENTAL HAZARDS

(a) ASBESTOS CONTROL

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS CERTIFICATION ACT

(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.

71-6303 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.

71-6309 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 require-

ments 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.

71-6310 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 equipment, 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 character-

istics 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.

71-6312 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 violation 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.

71-6317 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 CERTIFICATION ACT

71-6318 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.

71-6319.01 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.

71-6319.04 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.

71-6319.15 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 1999, LB 863, § 17; Laws 2007, LB296, § 657.

71-6319.17 Repealed. Laws 2007, LB 296, § 815.

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.

71-6319.40 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 governing 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 administering 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.

71-6326 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 establish 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.

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.

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 register 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.

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

Section
71-6602. Terms, defined.

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.

ARTICLE 67

MEDICATION REGULATION

(b) MEDICATION AIDE ACT

(b) MEDICATION AIDE ACT

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 the mentally retarded 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.

Cross References

Child Care Licensing Act, see section 71-1908.

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 accurate-

ly 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 the mentally retarded, 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 71-406, a nursing home, or an intermediate care facility for the mentally retarded 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 the mentally retarded 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.

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 the mentally retarded, 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.

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.

71-6732 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 section 25-12,123 or 71-2048 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such sections or such act.

Source: Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34.

Cross References

Patient Safety Improvement Act, see section 71-8701.

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 69
ABORTION

Section
71-6906. Performance of abortion; notice not required; when.
71-6908. Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.
71-6909. Repealed. Laws 2004, LB 172, § 1.

71-6906 Performance of abortion; notice not required; when.

Notification shall not be required pursuant to sections 71-6901 to 71-6908 if any of the following conditions exist:

(1) The attending physician certifies in writing in the pregnant woman's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and there is insufficient time to provide the required notification;

(2) The abortion is authorized in writing by the person who is entitled to notification; or

(3) The pregnant woman declares 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. Notice of such a declaration shall be made to the proper authorities as provided in sections 28-372 and 28-711. 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 as provided in sections 28-372 and 28-711.

Source: Laws 1991, LB 425, § 6; Laws 2005, LB 116, § 23.

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 parent or guardian notification 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.

71-6909 Repealed. Laws 2004, LB 172, § 1.

ARTICLE 70
BREAST AND CERVICAL CANCER

Section
71-7001. Repealed. Laws 2008, LB 797, § 35.
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 Repealed. Laws 2008, LB 797, § 35.

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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

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.
Operative date July 18, 2008.

ARTICLE 71

CRITICAL INCIDENT STRESS MANAGEMENT

Section
71-7105. Critical Incident Stress Management Council; created; members; duties.
71-7107. Department of Health and Human Services; duties.
71-7110. Critical incident stress management region; regional management committee; membership; regional clinical director; duties.

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.

71-7107 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.

71-7110 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.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

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.

71-7401 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.

Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (1) Holders of pharmacy licenses, (2) health care practitioner facilities as defined in section 71-414, (3) hospitals as defined in section 71-419, and (4) practitioners as defined in section 38-2838.

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.

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;

(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.

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 drug dispensing permit or delegated dispensing permit.

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.

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.

Source: Laws 2006, LB 994, § 24; Laws 2007, LB296, § 673.

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. Operative date April 22, 2008.

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 section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(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.

Cross References

Health Care Facility Licensure Act, see section 71-401.
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 con-

trolled 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 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.
71-7607. 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.
71-7614. Repealed. Laws 2008, LB 480, § 5.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

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.
Operative date July 15, 2008.

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.

(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.

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.
Effective date July 18, 2008.

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, except that of such revenue received on or after April 1, 2005, (1) two million five hundred thousand dollars shall be credited for fiscal years before FY2009-10 and (2) three million dollars shall be credited for FY2009-10 and subsequent fiscal years to the Tobacco Prevention and Control Cash Fund. For FY2008-09 five hundred thousand dollars shall be transferred from the Nebraska Tobacco Settlement Trust Fund to the Tobacco Prevention and Control Cash Fund. The State Treasurer shall make such transfer no later than July 15, 2008. Beginning in July 2008 and each year thereafter, on or before July 25, five hundred thousand dollars shall be transferred from the Nebraska Tobacco Settlement Trust Fund to the Stem Cell Research Cash Fund created under section 71-8805. 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.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB606, section 7, with LB928, section 32, and LB961, section 4, to reflect all amendments.

Note: Changes made by LB606 became effective March 26, 2008. Changes made by LB961 became operative April 3, 2008. Changes made by LB928 became operative April 22, 2008.

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.

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) fifty-six million four hundred thousand dollars no later than July 30, 2008, and (b) fifty-five million seven hundred thousand dollars annually thereafter no later than July 15 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. On or before May 1, 2008, the State Treasurer shall transfer from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund an additional two hundred fifty thousand dollars to the Nebraska Health Care Cash Fund. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in

perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. Except as otherwise provided by law, no more than the amount specified in subdivisions (1)(a) and (b) of this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

(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) One million dollars in the Nebraska Health Care Cash Fund is designated each year for the Autism Treatment Program Act for five fiscal years beginning in fiscal year 2007-08 and shall be distributed in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application and implementation of the waiver; (b) second, to the department for other medical costs for children who would not otherwise qualify for medicaid except for the waiver; and (c) third, the balance to the Autism Treatment Program Cash Fund. The State Treasurer shall transfer the balance of the funding to the Autism Treatment Program Cash Fund based on the estimated costs of administrative and other medical costs as determined by the Legislature through the appropriation process. The transfers to the Autism Treatment Program Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds under the Autism Treatment Program Act, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund.

(4) 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.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center within fifteen days after each July 1.

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.

Note: Changes made by LB961 became operative April 3, 2008. Changes made by LB480 became operative July 15, 2008. Changes made by LB830 became effective July 18, 2008.

Cross References

Autism Treatment Program Act, see section 85-1,138.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7614 Repealed. Laws 2008, LB 480, § 5.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

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

Section
71-7702. Terms, defined.

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 diagnostic 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.

ARTICLE 79

PEER REVIEW COMMITTEES

Section
71-7901. Health clinic; medical care organization or association; peer review committee authorized.

71-7901 Health clinic; medical care organization or association; peer review committee authorized.

Any health clinic as defined in section 71-416 and any other organization or association of health practitioners or providers licensed pursuant to the Uniform Credentialing Act may cause a peer review committee to be formed and operated or may contract with an outside peer review committee for the purpose of reviewing, from time to time, the medical care provided by such health clinic, organization, or association and for assisting individual practitioners or providers practicing in such clinics, organizations, or associations in maintaining and providing a high standard of medical care.

Source: Laws 1997, LB 222, § 1; Laws 2000, LB 819, § 145; Laws 2007, LB463, § 1302.

Cross References

Uniform Credentialing Act, see section 38-101.

ARTICLE 80

CERTIFIED INDUSTRIAL HYGIENIST TITLE PROTECTION ACT

Section
71-8008. Department of Health and Human Services; rules and regulations.

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 82

STATEWIDE TRAUMA SYSTEM ACT

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

Section
71-8211. Department, defined.
71-8228. Regional medical director, defined.
71-8231. State trauma medical director, defined.
71-8236. State Trauma Advisory Board; created; members; terms; expenses.
71-8239. Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.
71-8249. Statewide trauma registry; data; confidentiality.
71-8252. Regional trauma advisory boards; powers and duties.
71-8253. Act; how construed.

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.

71-8228 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.

71-8231 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.

71-8236 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.

71-8239 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 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.

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.
Operative date July 18, 2008.

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 emergency 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

Section
71-8312. Facility regulation system; periodic review.
71-8313. Department; credentialing recommendations.

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 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.

ARTICLE 84
MEDICAL RECORDS

Section
71-8402. Terms, defined.
71-8405. Charges; exemptions.

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.

Cross References

Mental Health Practice Act, see section 38-2101.

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.

ARTICLE 85

NEBRASKA TELEHEALTH ACT

Section
71-8503. Terms, defined.
71-8506. Medical assistance program; reimbursement; requirements.

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 telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where the patient is located; and

(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 but does not include a telephone conversation, electronic mail message, or facsimile transmission between a health care practitioner and a patient or a consultation between two health care practitioners.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695.

71-8506 Medical assistance program; reimbursement; requirements.

(1) On or after July 1, 2000, 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.

(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.

Source: Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 86
BLIND AND VISUALLY IMPAIRED

Section
71-8601. Act, how cited.
71-8603. Terms, defined.
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.

71-8601 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.

71-8603 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.

71-8610.01 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 sleep shades 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 bid submitted is comparable in price to the other bids submitted and the qualifications and capabilities of the vendors bidding for a contract are found to be similar 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.

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. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that reverts to the 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.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

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 evidenced-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 Cash Fund; created; use; investment.
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.
Effective date March 26, 2008.

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.
Effective date March 26, 2008.

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.
Effective date March 26, 2008.

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 annually report to the Legislature the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded. No more than three years after March 26, 2008, the committee shall report to the Legislature on the progress of any projects that have been awarded grants under the Stem Cell Research Act.

Source: Laws 2008, LB606, § 4.
Effective date March 26, 2008.

71-8805 Stem Cell Research Cash Fund; created; use; investment.

(1) The Stem Cell Research Cash Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Money credited to the Stem Cell Research Cash Fund pursuant to section 71-7608 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 the funds credited to the Stem Cell Research Cash Fund 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.

Source: Laws 2008, LB606, § 5.
Effective date March 26, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

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.
Effective date March 26, 2008.

ARTICLE 89

VETERINARY DRUG DISTRIBUTION LICENSING ACT

Section

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

71-8904 Controlled substance, defined.

Controlled substance has the definition found in section 28-401.

Source: Laws 2008, LB1022, § 4.
Operative date December 1, 2008.

71-8905 Department, defined.

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

Source: Laws 2008, LB1022, § 5.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

71-8909 Veterinary drug distributor, defined.

Veterinary drug distributor means any person or entity, other than a pharmacy, that engages in the distribution of veterinary legend drugs in the State of Nebraska.

Source: Laws 2008, LB1022, § 9.
Operative date December 1, 2008.

71-8910 Veterinary drug order, defined.

Veterinary drug order means a lawful order or prescription of a veterinarian licensed to practice in this state, which order or prescription is issued pursuant to a bona fide veterinarian-client-patient relationship.

Source: Laws 2008, LB1022, § 10.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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 depart-

ment 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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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;

(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;

(c) The original veterinary drug order 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 and includes the following information:

(i) Client name;

(ii) Veterinarian name;

(iii) Veterinary legend drug sold or delivered;

(iv) Quantity of the veterinary legend drug;

(v) Date of issue of veterinary drug order; and

(vi) Expiration date of veterinary drug order;

(d) All veterinary legend drugs distributed on the veterinary drug order of a licensed veterinarian 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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

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.
Operative date December 1, 2008.

CHAPTER 72
PUBLIC LANDS, BUILDINGS, AND FUNDS

Article.
2. School Lands and Funds. 72-224.03 to 72-258.03.
7. State Capital and Capitol Building. 72-724 to 72-730.
8. Public Buildings. 72-803 to 72-818.
10. Building Funds. 72-1001, 72-1005.
12. Investment of State Funds.
(a) Nebraska State Funds Investment Act. 72-1237 to 72-1243.
(b) Nebraska Capital Expansion Act. 72-1262.
(d) Review of Nebraska Investment Council. 72-1277, 72-1278.
17. Small Business Incubators. 72-1704.
22. Nebraska State Capitol Preservation and Restoration Act. 72-2201 to 72-2214.
23. Public Facilities Construction and Finance Act. 72-2301 to 72-2308.
24. Ferguson House. 72-2401.
25. Nebraska Incentives Fund. 72-2501.

ARTICLE 2
SCHOOL LANDS AND FUNDS

Section
72-224.03. Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.
72-249. Federal funds; receipt; deposit; how allocated.
72-257. School lands; expiration of lease; sale; mineral rights; appraisal; limitation on price; contiguous tracts; how treated.
72-258.03. School lands; sale; appraised value.

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.

72-249 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.

72-257 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.

72-258.03 School lands; sale; appraised value.

For purposes of sales of educational lands at public auction, appraised value is the adjusted value as determined by the Property Tax Administrator or his or her representative (1) for agricultural and horticultural land, multiplied by one and thirty-three hundredths, or (2) for all other classes of real property, multiplied by one, unless the Board of Educational Lands and Funds establishes a higher value pursuant to section 72-257 or 72-258, in which case that value shall be the appraised value for purposes of sale.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2.

ARTICLE 7

STATE CAPITAL AND CAPITOL BUILDING

Section

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.

72-728 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.

72-730 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.

ARTICLE 8
PUBLIC BUILDINGS

Section

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 2003 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 2003 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.

72-805 Buildings constructed with state funds; code requirements.

The 2003 International Energy Conservation Code applies to all new buildings constructed in whole or in part with state funds after July 1, 2005. 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.

72-806 Enforcement.

The enforcement provisions of Chapter 1 of the 2003 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.

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.

72-818 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 10

BUILDING FUNDS

Section
72-1001. Nebraska Capital Construction Fund; created; use; investment.
72-1005. State Building Fund; created; use; transfer of funds.

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. 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, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

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.

ARTICLE 12

INVESTMENT OF STATE FUNDS

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

Section
72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.
72-1238. Nebraska Investment Council; members; qualifications.
72-1239. Nebraska Investment Council; purpose; members; meetings; compensation.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

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, and the State Treasurer and the director of the Nebraska Public Employees Retirement Systems as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

Prior to September 1, 2006, each of the appointed members of the council shall serve for a term of five years and may be removed by the Governor for cause after notice and an opportunity to be heard. The term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. Beginning September 1, 2006, 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. Such term shall be extended until the date on which his or her successor's appointment is effective. For members serving on September 1, 2006, and whose terms would otherwise end on September 18, such terms shall be extended until the following December 31, or until the date on which 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.

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 and the director of the Nebraska Public Employees Retirement Systems, 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.

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.

72-1243 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. By March 15 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee. 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 15 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee 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.

(b) NEBRASKA CAPITAL EXPANSION ACT

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.

(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.
Operative date July 18, 2008.

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.

Source: Laws 2008, LB1147, § 18.
Operative date July 18, 2008.

ARTICLE 17

SMALL BUSINESS INCUBATORS

Section
72-1704. Community board; appointment; members; meetings; public records; certain disclosures prohibited.

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.

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

(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, and public donations. The 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, and to produce promotional material concerning the State Capitol, its grounds, and the Nebraska State Capitol Environs District. 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.

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.

72-2301 Act, how cited.

Sections 72-2301 to 72-2308 shall be known and may be cited as the Public Facilities Construction and Finance Act.

Source: Laws 2005, LB 217, § 1.

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) 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) 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) 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 VI School District	250
Class V School District	1500
Class IV School District	1000
Class III School District	500
Class II School District	250
Class I School District	250
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.

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.

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. Any money in the Employment and Investment Growth Fund, the Invest Nebraska Fund, the Nebraska Advantage Fund, the Nebraska Advantage Rural Development Fund, the Quality Jobs Fund, or the Rural Economic Opportunities Fund, on July 18, 2008, shall be transferred by the State Treasurer to the Nebraska Incentives 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 2008, LB914, § 24.
Operative date July 18, 2008.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.