

LEGISLATIVE BILL 93

Approved by the Governor February 17, 1987

Introduced by Conway, 17

AN ACT relating to mailing requirements; to amend sections 17-149.01, 21-2035, 21-2046, 24-597, 25-840.01, 25-1591, 30-2427, 46-576, 46-654, 68-630, 72-312, 77-1736.11, 77-1832, 77-3311, 81-517, and 81-8,285, Reissue Revised Statutes of Nebraska, 1943, sections 8-1111, 12-802, 12-1116, 43-1505, 44-10,106, 46-1236, and 48-133, Revised Statutes Supplement, 1986, and section 6-108, Uniform Commercial Code; to authorize certain mailings to be made by certified mail; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-1111, Revised Statutes Supplement, 1986, be amended to read as follows:

8-1111. Except as hereinafter in this section expressly provided, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the

broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, ~~is~~ are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to a sale to not more than ten persons, other than those designated in subdivision (8) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, except to a broker-dealer registered under the Securities Act of Nebraska, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an

order issued by the director in his or her discretion, and (d) no solicitations are made by newspaper, radio, or television;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof,

disallowed the exemption; or

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a broker-dealer or issuer dealer registered under the Securities Act of Nebraska, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. As used in this section, not involving any public offering shall mean any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the

exercise of reasonable care could not have known of the order. In any proceeding under the Securities Act of Nebraska, the burden of proving an exemption from a definition ~~is~~ shall be upon the person claiming it.

Sec. 2.. That section 12-802, Revised Statutes Supplement, 1986, be amended to read as follows:

12-802. The notice shall state the legal description of such burial lot, the property located on such lot which is claimed to be so unsightly, dilapidated, or decayed, and that if the property is not repaired or removed within thirty days after such notice is given, the trustees will proceed to either repair or remove the same. The notice shall be given to, served upon, or sent by certified or registered mail to the owner of record. If the owner of record is deceased or his or her whereabouts are unknown, such notice shall be given to, served upon, or sent by certified or registered mail to any one of the next of kin of the owner of record of such lot. In the event that neither an owner of record nor any one of the next of kin of an owner of record of such lot can be found, the notice may be given by publishing the same one time in a legal newspaper published in and of general circulation in the county in which the cemetery is located or, if none is published in such county, in a legal newspaper of general circulation in the county in which the cemetery is located. Such notice shall be addressed to the record owner and to all persons having or claiming any interest in or to the burial lot, which shall be set forth in such notice by its legal description. The notice shall date from the date of the delivery or service of such notice, the date of mailing such notice by certified or registered mail, or the date of the publication in the newspaper.

Sec. 3. That section 12-1116, Revised Statutes Supplement, 1986, be amended to read as follows:

12-1116. (1) The director may revoke any license of any pre-need seller or agent if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any of the provisions of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated by the director pursuant to such act; or

(c) An act or condition exists which, if it had existed at the time of the original application of

such licensee, would have resulted in the director refusing to issue such license.

(2) Written notification shall be provided to the licensee upon the director's making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license;

or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, sections 84-913 to 84-918 shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee's license, and the licensee shall surrender the license to the director.

Sec. 4. That section 17-149.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

17-149.01. In case any property owner ~~shall neglect or fail neglects or fails~~ within a period of ten days, after notice has been given to him or her as to do by certified or registered mail or by publication in some newspaper published or of general circulation in such city or village, to make such connection with the sewerage system, the governing body of such city or village shall have power to cause the same to be done, to assess the cost thereof against the property, and to collect the assessment thus made in the manner provided for collection of other special taxes and assessments.

Sec. 5. That section 21-2035, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2035. All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors, except as may be otherwise provided in ~~sections 21-2001 to 21-20134~~ the Nebraska Business Corporation Act or in the articles of incorporation. If any provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by ~~sections 21-2001~~

to 21-20,134 such act shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors, but any change in qualifications that the articles of incorporation or bylaws may make shall not affect the incumbent directors during the term for which they were elected. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

A director shall perform his or her duties as a director, including his or her duties as a member of any committee of the board upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

In performing his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which he or she does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his or her duties shall have no liability by reason of being or having been a director of the corporation.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be is entered in the minutes of the meeting or

unless he or she ~~shall file files~~ his or her written dissent to such action with the secretary of the meeting before the adjournment thereof or ~~shall forward forwards~~ such dissent by certified or registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Sec. 6. That section 21-2046, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2046. In addition to any other liabilities, a director shall be liable in the following circumstances unless he or she complies with the standard provided in ~~sections 21-2001 to 21-20-134~~; the Nebraska Business Corporation Act for the performance of the duties of directors:

(1) A director who votes for or assents to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of ~~sections 21-2001 to 21-20-134~~ the act or contrary to any restrictions contained in the articles of incorporation; shall be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the ~~provisions of sections 21-2001 to 21-20-134 act~~ or the restrictions in the articles of incorporation;

(2) A director who votes for or assents to the purchase of the corporation's own shares contrary to the provisions of ~~sections 21-2001 to 21-20-134~~ the act shall be liable, jointly and severally with all other directors so voting or assenting, to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the ~~provisions of sections 21-2001 to 21-20-134 act~~;

(3) A director who votes or assents to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be liable, jointly and severally with all other directors so voting or assenting, to the corporation for the value of such assets which are distributed, to the extent that such

debts, obligations, and liabilities of the corporation are not thereafter paid and discharged; and

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, except as permitted in ~~sections 21-2001 to 21-20,134~~ the act, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent ~~shall be~~ is entered in the minutes of the meeting or unless he or she ~~shall file files~~ his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or ~~shall forward forwards~~ such dissent by certified or registered mail to the secretary of the corporation immediately after adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subdivision (1), (2), or (3) of this section if he or she relied and acted in good faith upon financial statements of the corporation represented to him or her to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he or she be so liable if in good faith in determining the amount available for any such dividend or distribution he or she considered the assets to be of their book value.

Any director against whom a claim ~~shall be~~ is asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who ~~shall be~~ is held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of ~~sections 21-2001 to 21-20,134~~ the act, in proportion to the amounts received by them.

Any director against whom a claim ~~shall be~~ is asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Sec. 7. That section 24-597, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-597. In discharging their duties, constables may call to their aid the power of the municipality for such assistance as may be necessary. It shall be the duty of every constable or sheriff to make due return of all process to him or her directed and by him or her delivered or served by certified or registered mail, at the proper office and on the proper return day thereof, or if the judgment is docketed in the district court, appealed, or stayed, upon which he or she has an execution, on notice thereof, to return the execution, stating thereon such facts.

Sec. 8. That section 25-840.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-840.01. (1) In an action for damages for the publication of a libel or for invasion of privacy as provided by section 20-204 by any medium, the plaintiff shall recover no more than special damages, unless correction was requested, as herein provided, and was not published. Within twenty days after knowledge of the publication, plaintiff shall have given each defendant a notice by certified or registered mail specifying the statements claimed to be libelous or to have invaded privacy as provided by section 20-204 and specifically requesting correction. Publication of a correction shall be made within three weeks after receipt of the request. It shall be made in substantially as conspicuous a manner as the original publication about which complaint was made. A correction, published prior to receipt of a request therefor, shall have the same force and effect as if published after such request. The term special damages, as used in this section, shall include only such damages as plaintiff alleges and proves were suffered in respect to his or her property, business, trade, profession, or occupation as the direct and proximate result of the defendant's publication.

(2) This section shall not apply if it is alleged and proved that the publication was prompted by actual malice, and actual malice shall not be inferred or presumed from the publication.

Sec. 9. That section 25-1591, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1591. If jurisdiction of the person of the judgment debtor cannot be obtained, a notice clearly

designating the foreign judgment and reciting the fact of registration, the court in which it is registered, and the time allowed for pleading, shall be sent by the clerk of the registering court by certified or registered mail to the last-known address of the judgment debtor. Proof of such mailing shall be made by certificate of the clerk.

Sec. 10. That section 30-2427, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2427. (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 30-2220 by the petitioner under subdivision 30-2220(a)(1) to the persons herein enumerated and to any additional person who has filed a demand for notice under section 30-2413.

Notice shall be given to the following persons: ~~the~~ The surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the clerk shall publish notice to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated in accordance with section 30-2220(a)(2). The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on ~~said~~ the petition shall be sent by certified or registered mail to the alleged decedent at his or her last-known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) ~~By~~ by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) By by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) By by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Sec. 11. That section 43-1505, Revised Statutes Supplement, 1986, be amended to read as follows:

43-1505. (1) In any involuntary proceeding in a state court, where when the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the secretary. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(2) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. When state law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the secretary upon appointment of counsel and request from the secretary, upon certification of the presiding judge, payment of reasonable fees and expenses out of funds which may be appropriated.

(3) Each party to a foster care placement or termination of parental rights proceeding under state law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such

action may be based.

(4) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(5) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(6) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Sec. 12. That section 44-10,106, Revised Statutes Supplement, 1986, be amended to read as follows:

44-10,106. (1) Every society authorized to do business in this state shall appoint in writing the Director of Insurance and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served and shall agree in such writing that any lawful process against it which is served on the attorney ~~shall~~ will be of the same legal force and validity as if served upon the society and that the authority ~~shall~~ will continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by the director, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original might be admitted.

(2) Service shall only be made upon the Director of Insurance or if absent upon the person in charge of his or her office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the director, he or she shall forthwith forward one of the duplicate copies by certified or registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a

society to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section.

Sec. 13. That section 46-576, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-576. Immediately after the filing of the petition as provided in section 46-575, the board of directors of such district shall (1) by order fix a place and time, not less than ninety days nor more than one hundred twenty days after the petition is filed, for hearing thereon, (2) cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon, and (3) forthwith cause a copy of the notice to be mailed by certified or registered mail to the county boards of each of the several counties having territory within the tract or tracts of land proposed to be annexed.

Sec. 14. That section 46-654, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-654. (1) Any public water supplier having a permit under ~~sections 46-638 to 46-650~~, the Municipal and Rural Domestic Ground Water Transfers Permit Act is hereby granted the protection of ~~the provisions of sections 46-651 to 46-655~~ for all wells for which a permit has been or in the future is granted by the Department of Water Resources under ~~sections 46-638 to 46-650~~ such act.

(2) If in its application for a permit pursuant to ~~sections 46-638 to 46-650~~, such act a public water supplier requests the protection of the spacing requirements of section 46-651 for test holes and wells under construction, and if the permit is granted, the director shall identify in the permit the area to which the spacing protection ~~shall~~ will apply and the spacing protection of section 46-651 shall then apply to such area for a period of one year from the date the permit is granted. The director shall notify, by certified or registered mail, owners and occupiers of land affected by the granting of such spacing protection, according to information supplied by the applicant. Costs of providing such notice shall be borne by the applicant. Owners or occupiers of land not receiving the notice required by this subsection shall not be bound by the spacing requirements until the applicant's wells are completed. Such protection may be extended by the

director, by a similar procedure, upon application by the public water supplier and good cause shown, for additional one-year periods.

Sec. 15. That section 46-1236, Revised Statutes Supplement, 1986, be amended to read as follows:

46-1236. All licenses and certificates issued pursuant to the Water Well Standards and Contractors' Licensing Act shall expire on December 31 of the year for which issued. A license or certificate may be renewed on or before December 31 of each year upon payment of the annual fee established pursuant to section 46-1224. If a licensee or certificate holder has not paid for the renewal of his or her license or certificate on or before December 1, he or she shall be notified by certified or registered mail on or before December 15 that the license or certificate will expire. A license or certificate not renewed on or before December 31 or the first working day thereafter shall expire. A license or certificate once expired may not be reinstated without passing an examination.

Sec. 16. That section 48-133, Revised Statutes Supplement, 1986, be amended to read as follows:

48-133. No proceedings for compensation for an injury under the Nebraska Workers' Compensation Act shall be maintained unless a notice of the injury shall have been given to the employer as soon as practicable after the happening thereof; PROVIDED, that all disputed claims for compensation or benefits shall be first submitted to the Nebraska Workers' Compensation Court. The notice shall be in writing and shall state in ordinary language the time, place, and cause of the injury. It shall be signed by the person injured, or by a person in his or her behalf, or in the event of his or her death, by his or her legal representative or by a person in his or her behalf. The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering the notice to the person on whom it is to be served, or leaving it at his or her residence or place of business, or by sending it by certified or registered mail addressed to the person or corporation on whom it is to be served at his or her last-known residence or place of business. A notice given pursuant to this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk,

as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under the Nebraska Workers' Compensation Act, if it be shown that the employer had notice or knowledge of the injury.

Sec. 17. That section 68-630, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

68-630. In addition to other remedies provided for the collection or recovery of delinquent payments due under the provisions of section 68-610, the state agency may, in the event of any such delinquency, notify the county treasurer of the appropriate county to withhold payment to the delinquent political subdivision of any funds in the hands of such county treasurer to which such delinquent political subdivision would otherwise be entitled. The notice referred to shall be sent to the county treasurer by certified or registered mail, and a copy of such notice shall be sent by ordinary mail to the secretary of the delinquent political subdivision. The county treasurer shall thereafter withhold payments in the manner provided in this section until notified by the state agency that the delinquency has been corrected.

Sec. 18. That section 72-312, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-312. Alkali, potash, or saline lakes, ponds, or marshes, located partly upon state lands and partly upon private lands, shall be measured, tested, and analyzed by the Conservation and Survey Division of the University of Nebraska; ~~who~~ which shall report to the Board of Educational Lands and Funds, and the proportion of the area and content belonging to each owner shall be determined from such report. If the state lessees and private owners or lessees are unable to agree for joint operation of such area, no alkali, potash, or salines in solution shall be removed from such ponds, lakes, or marshes until after thirty days' notice by certified or registered mail to all parties concerned. Any or all parties may then operate by rendering monthly an accounting to the board and by paying to the county treasurer in the county in which the land is located, for the state educational funds, the royalty due the state, as determined by the board. ~~The~~ 7 ~~PROVIDED, that the state shall, at all times, be permitted to examine the books and methods of bookkeeping with relation to the accounts in which the state is interested, and to furnish, if deemed necessary~~

by the board, assistants to make analyses or for checking the quality and quantity of minerals or substances removed.

Sec. 19. That section 77-1736.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1736.11. ~~Whenever~~ If (1) a court of competent jurisdiction has declared void or invalid a levy of taxes upon real estate or personal property by any city or village, ~~and when~~ (2) such court has by order or decree directed the county treasurer to refund the amount of such void or invalid levy to the owner or owners of the property taxed, and ~~if~~ (3) such owner or owners fail to claim such refund for a period of three years from the time the levy was declared void or invalid, all of such unclaimed refunds shall be credited by the county treasurer to the general fund of the city or village for whom the taxes were levied. The county treasurer shall, by certified or registered mail addressed to the last-known address, give notice of such order or decree to the owner or owners of all property so illegally taxed and the date by which a claim for refund must be made.

Sec. 20. That section 77-1832, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1832. Service of the notice provided by section 77-1831 shall be made on every person in actual possession or occupancy of the land, upon the person in whose name the title to the land appears of record, and upon every encumbrancer of record in the office of the register of deeds of the county; if, upon diligent inquiry, he or she can be found in the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified or registered mail to the holder of such lien at the address appearing of record.

Sec. 21. That section 77-3311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3311. In any case in which this state and one or more other states each claims that it was a domicile of a decedent at the time of his or her death, and no judicial determination of domicile for death tax purposes has been made in any of such states, any executor, or administrator, or the taxing official of any such state, may elect to invoke the provisions of sections 77-3301 to 77-3316 the Uniform Act on Interstate Arbitration and Compromise of Death Taxes.

Such election shall be evidenced by the sending of a notice by certified or registered mail, return receipt requested, to the taxing officials of any such state and to each executor, ancillary administrator, and interested person. Any executor or administrator may reject such election by sending a notice by certified or registered mail, return receipt requested, to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election ~~be is~~ rejected, no further proceedings shall be had under ~~sections 77-3301 to 77-3316~~ the act. If such election is not rejected, the dispute as to the death taxes shall be determined solely as provided in ~~sections 77-3301 to 77-3316~~ the act, and no other proceedings to determine or assess such death taxes shall thereafter be instituted in the courts of this state or otherwise.

Sec. 22. That section 81-517, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-517. The owner of any building so condemned or any lessee upon whom such notice and order are served, within twenty days from the date of such service as herein provided, may file with the clerk of the court and serve upon the State Fire Marshal, by certified or registered mail, written objections to ~~said~~ the order in the form of an answer denying the existence of any of the facts therein recited which he or she desires to controvert. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the State Fire Marshal to proceed with the enforcement thereof. ~~If ; but if~~ an answer be is filed and served, ~~as herein provided,~~ the court shall hear and determine the issues so raised and give judgment thereon as herein provided.

Sec. 23. That section 81-8,285, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,285. (1) The commission may, upon its own motion, and shall, upon the written complaint of any aggrieved person, investigate the action of any licensed real estate appraiser and shall have the power to suspend or revoke any license issued under the provisions of sections 81-8,276 to 81-8,287 at any time when, after notice and hearing as provided for in this section, it finds that such licensee has made any false statement in his or her application for a real estate

appraiser's license, knowingly violated any of the provisions of such sections ~~81-8,276 to 81-8,287~~ or regulations of the commission, or has done any act which constitutes dishonest, fraudulent, or improper conduct.

(2)(a) If a public hearing is requested by an applicant in accordance with section 81-8,283; or if information brought to the attention of the commission is such that, in the commission's discretion, it would be proper to suspend or revoke the license of a licensee, the commission shall forthwith set the matter for hearing and, at least twenty days prior to the hearing date, it shall notify in writing the applicant or licensee of the reasons for the denial or of the charges made and shall afford such applicant or licensee an opportunity to be heard in person or through counsel in reference thereto. Such written notice shall be served by delivery ~~of same~~ personally to the applicant or license holder or by mailing ~~the same~~ by certified or registered mail to the last-known business address of such applicant or license holder. The hearing on such charges shall be at such time and place as the commission ~~shall prescribe; PROVIDED; prescribes, except~~ that in cases involving revocation of the license of a nonresident of this state licensed under sections 81-8,276 to 81-8,287 by the real estate commission of the state or district in which such nonresident licensee is a resident, or when there is a conviction by a court of competent jurisdiction of any licensee under such sections ~~81-8,276 to 81-8,287~~ which constitutes a violation of such sections ~~81-8,276 to 81-8,287~~ or a similar act of another state and the order of such commission or court of competent jurisdiction is certified to the commission, any nonresident real estate license may be revoked by the commission without hearing. Any member of the commission or its director shall have power to administer oaths and to subpoena and bring before the commission any person in this state or take testimony of any such person by deposition upon allowance of fees as in civil cases in district court and mileage as provided in section 84-306.03 for state employees. Any party to any hearing before the commission shall have the right to the attendance of witnesses in his or her behalf at such hearing upon making request therefor to the commission and designating the person or persons to be subpoenaed.

(b) Any subpoena so issued shall be served by the county sheriff or his or her deputies. Nonresidents may be served by certified or registered mail. If any witness so subpoenaed ~~shall refuse or neglect~~ refuses or

neglects to attend, or attending; refuse attends but refuses to testify, such official issuing the subpoena shall report the fact to the appropriate court and such court shall proceed against such witness in all respects as if such neglect or refusal had been by a witness subpoenaed to appear in such court in a case pending before it.

(c) After such hearing, the commission shall state in writing, officially signed by the chairperson and attested to by the director, its findings and determination and its order in the matter. If the commission ~~shall determine~~ determines that the license holder has been guilty of any violation of the provisions of sections 81-8,276 to 81-8,287, his or her license shall be revoked or suspended forthwith, or the commission may enter an order censoring the license holder. The execution of a penalty of suspension may be stayed by the commission and the licensee may be placed on probation for any portion of the suspension period, after satisfactory completion of which the license shall be fully reinstated.

Within ten days after an order of the commission has become final, the applicant for a license or a license holder may obtain judicial review thereof by serving upon the director a written notice of appeal and a demand in writing for certified transcript of all the papers on file in his or her office affecting or relating to such order, together with a transcript of the evidence and the payment of the fee therefor, and he or she shall, within thirty days from the entry of such order, file a petition for review in the district court for the county where the cause of action or some part thereof arose, together with a bond to the State of Nebraska in the sum of two hundred dollars, with sufficient surety to be approved by the clerk of the district court to which such appeal is taken and conditioned that the applicant for a license or the license holder shall pay all costs taxed against him or her which may accrue to the commission by reason of taking such appeal. In lieu of such bond, a cash deposit of two hundred dollars may be made with the clerk for the same purpose. The petition for review need not be verified but shall state the grounds upon which such review is sought. The commission shall be deemed to be a party to any such review proceedings. The petition for review shall be served upon the director by leaving with him or her a copy of the petition, and the commission shall file its answer within ten days from the date of service of the petition

for review.

In any judicial proceeding under sections 81-8,276 to 81-8,287, the court shall consider the matter de novo upon the record. The court may on its own motion order additional evidence to be taken before it. In addition, any party to such review may offer additional evidence before the court if such party shall have served written notice of such offer on the other parties at least ten days prior to the hearing. Such notice shall set out the nature of the evidence which he or she so desires to offer and the names of the witnesses whom he or she intends to call. In such event the other parties may without advance notice offer evidence in rebuttal. Such proceedings shall be heard in a summary manner.

(d) Whenever the commission revokes the license of any person, and no appeal to the proper court has been filed within the time specified for such appeals, the commission shall mail a written notice of such revocation to all real estate appraisers licensed under sections 81-8,276 to 81-8,287.

(e) When the license of a nonresident is so suspended or revoked, the commission shall also send written notice, stating the cause for such revocation or suspension, to the real estate commission or licensing authority in the state or district of which such nonresident licensee is a resident.

(3) Grounds for suspension or revocation shall be:

(a) Proof that the licensee is doing business in violation of sections 81-8,276 to 81-8,287;

(b) Proof that the license has been obtained by fraud or misrepresentation;

(c) Proof that the licensee is falsely impersonating a practitioner or is practicing under an assumed, fictitious, or corporate name;

(d) Proof that the licensee has been found guilty of a felony;

(e) Proof that the licensee is guilty of perjury, fraud, or deceit; or of gross negligence, incompetency, or misconduct in the practice of real property appraising;

(f) Proof that the licensee permitted his or her signature to be affixed to any appraisal report if such report was not prepared by him or her or under his or her personal supervision by his or her regularly employed subordinates;

(g) Proof that the licensee accepted an engagement to appraise a property where in which his or

her employment or fee is contingent upon his or her reporting a predetermined or specified value, or is otherwise contingent upon a finding to be reported;

(h) In cases when monetary damages are involved, the licensee has made his or her compensation contingent upon the amount of or as a percentage of the damages which may be agreed upon or finally decreed; or

(i) For other causes that the commission may deem proper.

Sec. 24. That section 6-108, Uniform Commercial Code, be amended to read as follows:
6-108. Auction sales; auctioneer.

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his or her creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6-104).

(3) The person or persons other than the transferor who direct, control, or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (Section 6-104); and

(b) give notice of the auction personally or by certified or registered mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him or her to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer, such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

Sec. 25. That original sections 17-149.01, 21-2035, 21-2046, 24-597, 25-840.01, 25-1591, 30-2427, 46-576, 46-654, 68-630, 72-312, 77-1736.11, 77-1832, 77-3311, 81-517, and 81-8,285, Reissue Revised Statutes of Nebraska, 1943, sections 8-1111, 12-802, 12-1116, 43-1505, 44-10,106, 46-1236, and 48-133, Revised Statutes Supplement, 1986, and section 6-108, Uniform Commercial Code, are repealed.